

REAUTHORIZATION OF THE SATELLITE HOME VIEWER ACT

HEARING BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS FIRST SESSION

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REAUTHORIZATION OF THE SATELLITE HOME VIEWER ACT

WEDNESDAY, FEBRUARY 24, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Cox, Deal, Largent, Cubin, Shimkus, Wilson, Pickering, Fossella, Blunt, Bliley (ex officio), Markey, Boucher, Eshoo, Wynn, Luther, Sawyer, Green, and Dingell (ex officio).

Staff present: Justin Lilley, majority counsel; Mike O'Rielly, professional staff member; Cliff Riccio, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. This hearing will now come to order.

Today the subcommittee begins its review of the Satellite Home Viewer Act. SHVA is one of the most important consumer-related issues we will deal with as we wind down this century. Everywhere I go Members are asking me the same thing: "Billy, are we going to do anything?" and "What are we going to do?" Tens of thousands of Americans have contacted their elected representative here in Washington pleading with us to resolver the festering problem: How can they receive their local television stations or a network feed on their home satellite dishes? These issues are known as local and wide area issues.

In many respects this hearing is a continuation of the subcommittee's inquiry into the state of competition in the market for multi-channel video programming distribution. SHVA, after all, was enacted with the intent of promoting competition with incumbent cable operators. Now that SHVA is scheduled to expire on December 31, 1999, Congress must begin its work now to reauthorize and reform this important statute.

When the Commerce Committee first passed SHVA in 1988, I stated in the committee report that satellite television was the genie of competition, and that Congress would continue to monitor the genie to see whether it flourishes in the marketplace or whether it retreats back into the bottle. Eleven years later, we can safely say that the genie has not retreated to its bottle, nor will it. Satellite television is here to stay.

Indeed, subscribership for satellite television services is growing exponentially. With the advent of digital high-power DVS systems, the industry has now moved to new levels. It is now able to compete in urban and suburban markets that heretofore were inaccessible. But, will satellite-delivered television continue to flourish in the 21st century or will we revert back to this [indicating]? Will we simply step back in time or will we step into the future?

Isn't it ironic that broadcasters are investing billions of dollars into new digital equipment to deliver the knocks-your-socks-off pictures that they promised us, and yet, millions of Americans are being told that they must hook up antennas and rabbit ears like these kinds of antennas and rabbit ears that formerly were hooked up to television sets in order to receive some kind of local picture? Or are they going, indeed, to have to wrap hangars in tinfoils to get some kind of fuzzy reception of their important local network pictures?

I don't believe this is the new millennium technology expected by consumers today. This is an important question, for there are serious and substantial issues that need to be addressed in order for competition to continue to grow.

Local-into-local is one important example. This committee has long had an important history of removing artificial legal barriers to competition. This, after all, was what the 1996 Telcom Act was all about. The time has now come for us to apply that abiding principle to satellite television. Technology no longer prevents satellite delivery of both distant and local broadcast signals. Technology is in place, but the legal authority is not. The law, therefore, must give way. That is why we have introduced legislation in the 105th Congress to do just that, and that is why I intend, with our committee's help, to do the same thing this Congress.

Another potential regulatory impediment to competition is the disparity in royalty fees paid by satellite provider and cable operators. Mr. Markey and I, with the help of Mr. Bliley and Mr. Dingell, pushed legislation through the House last year that would have frozen these royalty rate increases. The legislation, unfortunately, died in the Senate. But we have a chance to address these royalty fees again this Congress, and I expect that we will prevail this time.

Finally, we have to address the wide area dispute. In some respects, Congress is a victim of its own success. We set out to promote competition with cable, and we succeeded to some extent. As the old saying goes, be careful about what you wish for.

Indeed, the flip side of the coin of successful has been enforcement headaches. The Federal court now in Miami has found that satellite television distributors have violated the Satellite Home Viewers Act.

Let me also say that we are concerned about the court solution, and that it may go too far. Today I want to explore with our witnesses whether the predictive model used by the court unnecessarily terminates network programming, so many consumers are, in fact, unserved, as defined by the act.

In the end, consumers should not be caught in the middle. The burden is upon all of us here today, the Congress as well as the industry participants, to find solutions for consumers. If consumers

can get access to local signals through other means, then let's talk about what legal and regulatory impediments exist in the development of these alternative delivery mechanisms. Likewise, if the court's predictive model sweeps in too many consumers, then we owe it to those consumers to ensure that service is not unnecessarily disrupted.

Just this week we learned that 700,000 consumers may, in fact, be divested of their right to receive network programming over their satellite, in view of this Federal court decision. In that light, I want to announce that Chairman Bliley and I are preparing, with the help of the committee—and I know I received similar requests from members on the other side—to offer legislation as early as this week to set up a moratorium on that, so you are going to give us some time to get the local-into-local problems worked out. We are preparing that legislation and will file it imminently.

This weekend, of course, we may or may not see the cutoff of service to a great many consumers in America. When the phones begin to ring to the Members of Congress all over this country, I think the message will go out loud and clear: It is time for Congress to act and to ensure that local programming is available to satellite consumers in America.

I look forward to this hearing on more of these critical issues. Let me say, as we proceed to the legislation, we will continue to ask for all of your help in finding the right answers. Our committee has devoted substantial time and resources to finding ways to promote competition. Part of that effort needs to be the reauthorization of the Satellite Home Viewers Act, and we will do that, but we will reform it as well. Our laws simply have to keep pace with technology, as well as with consumer demand, and we will do our best to accommodate both of those requirements.

The Chair is now pleased to welcome and recognize my good friend, the ranking minority member, Mr. Markey, for an opening statement.

Mr. MARKEY. Thank you, Mr. Chairman, and thank you so much for calling this very timely hearing today. The backdrop for the issues that will be raised here today are interpretations of provisions of the Satellite Home Viewer Act, which is often referred to by its acronym and pronounced, "shiva," the way a New Englander would describe how southerners react to cold weather.

The debate on SHVA, which is not an ancient statute by most standards, having been enacted in 1988 to deal with the eight-foot dish industry, underscores both how much has changed recently in technology and how much we need to remind ourselves of our historic policy goals in telecommunications policy.

The cornerstones of communications are, for decades—and I think continue today to be—universal service, localism, and diversity. SHVA was enacted to fulfill one of those cornerstones—namely, universal service—by permitting consumers who could not receive an adequate signal from a local, over-the-air broadcaster to import, by way of satellite, the distant network TV signals from afar. People who were not served by local broadcasters are said to reside in "white areas."

Yet, we were mindful in fulfilling the goal of getting network programming to people in white areas, not to trample on another im-

portant communications value; namely, localism. We sought to safeguard localism by stipulating that people who could receive local signals should do so, rather than bypass their local TV stations, because local TV stations need the advertising revenue to keep on the public affairs and news programming for people in their community. And unless there was a good reason why not to, people should continue to avail themselves of their local broadcast stations, for those good, solid localism-related reasons.

Of course, in 1988, when we wrote this statute, the direct broadcast satellite revolution had yet to begin. In 1992, Mr. Tauzin and I and others passed a program access statute, which gave birth to the 18-inch dish revolution, and that was our goal. So, only beginning in 1993 has this 18-inch dish revolution been in place.

Of course, that is not by definition the hollows of West Virginia or farmland in Iowa that the eight-foot dish dealt with, but, rather, we are now talking about urban and suburban America inside of the historic area where television stations were able to send their signals.

So while we try to encourage the 18-inch dish industry, we come back now 4 or 5 years later with a bunch of public policy questions to get raised in terms of the impact on local TV stations and their ability to serve the poorest people in their community, who can't afford cable or satellite in terms of the quality of the programming, the public affairs, the news, which go into those local community homes.

So the U.S. District Court, as the chairman said, in Miami, which interpreted the white area provisions, has ruled. In response to a lawsuit brought by a number of broadcasters, the court issued rulings that will require the termination of satellite delivery of distant network signals effective on February 28 and April 30 to almost 2 million consumers. Once again, this committee will be tasked with addressing universal service while simultaneously balancing localism.

Thankfully, the technology is arriving that will help deal with a portion of the problem. Satellite providers are exploring how to provide consumers with local TV signals, which is referred to as local-to-local service. This would help satellite consumers offer a more comparable service to cable operators and more effectively compete in the marketplace.

However, it is important to recognize that it will not be possible for satellite providers to bring every local channel to everyone in every local market in the near future. Yet, local-to-local is an improvement over the current situation, and Congress must help get it underway on a transitional basis at the very least, and do so this year.

In addition, wireless cable alternatives may help to supplement DVS signals, to provide a complete programming package to consumers that includes local TV signals. I believe that the Congress and the FCC should do what can be done to foster such alternative choices and get them to the marketplace as soon as possible.

That is because there is another backdrop to our action in committee, in addition to the court-ordered cutoff of distant network signals, and that is that price controls on cable programming services will end after March 31, next month. In my opinion, fixing the

white area problem and approving legislation permitting DVS to provide local TV signals will not in themselves provide enough of a marketplace check on price hikes in the cable industry.

Moreover, head-to-head wireline video competition on a massive basis is also clearly not going to happen before cable programming is deregulated at the end of March. My personal feeling is that cable monopolies should be deregulated only when effective competition makes such protection unnecessary, and that we should not end consumer price protections on the basis of a date chosen long ago, making an assumption that every telephone company in America by this date would be providing cable and telephone service. It did not happen.

That is why I believe that Congress must do more. We need to explore how to make competitors more effective and remove impediments to more robust cable competition, and we must make sure that, prior to the emergence of effective competition in particular markets, that consumers are not treated unfairly.

Mr. Chairman, this is about as important a hearing as we are going to have this year. I am glad to get started off the year with it, and I hope that all of the members are able to hear these witnesses today, because it sets a wonderful table for us to be able to work from for the rest of the year.

[The prepared statement of Hon. Edward J. Markey follows:]

PREPARED STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MASSACHUSETTS

Good Afternoon. I want to start off by commending Chairman Tauzin for calling this timely hearing today. The backdrop for the issues that will be raised today are interpretations of provisions of the Satellite Home Viewer Act (SHVA).

The debate on SHVA—which is not an ancient statute by most standards, having been enacted in 1988—underscores both how much has changed recently in technology and how much we need to remind ourselves of our historic policy goals in telecommunications policy. The cornerstones of communications policy in the United States for decades have been universal service, localism, and diversity.

SHVA was enacted to fulfill one of these cornerstones, namely, “universal service,”—by permitting consumers who could not receive an adequate signal from a local over-the-air broadcaster to import, via satellite, the distant network TV signals from afar. People who were not served by local broadcasters are said to reside in “white areas.” Yet we were mindful in fulfilling the goal of getting network programming to people in “white areas” not to trample on another important communications value, namely “localism.” We sought to safeguard localism by stipulating that people who could receive local signals should do so rather than bypass their local station.

Of course, in 1988, when we wrote the statute, the Direct Broadcast Satellite (DBS) revolution had yet to begin. We return today and DBS has around 9 million customers. As we return to SHVA in 1999, the touchstone will be to address the fallout from a series of recent court decisions from the U.S. District Court in Miami, which interpreted the “white area” provisions of SHVA. In response to a lawsuit brought by a number of broadcasters, the court issued rulings that will require the termination of satellite delivery of distant network signals—effective on February 28th and April 30th—to up to almost 2 million consumers. Once again, this Committee will be tasked with addressing universal service while simultaneously balancing localism.

Thankfully, technology is arriving that will help deal with a portion of the problem. Satellite providers are exploring how to provide consumers with local TV signals—what is referred to as “local-to-local” service. This would help satellite consumers offer a more comparable service to cable operators and more effectively compete in the marketplace. However, it is important to recognize that it will not be possible for satellite providers to bring every local channel to everyone in every local market in the near future.

Yet "local-to-local" is an improvement over the current situation and Congress ought to help get it underway on a transitional basis at the very least. In addition, wireless cable alternatives may help to supplement DBS signals to provide a complete programming package to consumers that includes local TV signals. I believe that Congress and the FCC should do what can be done to foster such alternative choices and get them in the marketplace as soon as possible.

That's because there is another backdrop to our action in Committee in addition to the court-ordered cutoff of distant network signals. And that is that price controls on cable programming services will end after March 31st.

In my opinion, fixing the white area problem and approving legislation permitting DBS to provide local TV signals will not in themselves provide enough of a marketplace check on price hikes in the cable industry. Moreover, head-to-head wireline video competition on a massive basis is also clearly not going to happen before cable programming is deregulated at the end of March.

My personal feeling is that cable monopolies should be deregulated only when effective competition makes such protection unnecessary, and that we should not end consumer price protections on the basis of a date chosen for political reasons.

That is why I believe Congress must do more. We need to explore how we can make competitors more effective and remove impediments to more robust cable competition. And we must make sure that prior to the emergence of effective competition in particular markets that consumers are not treated unfairly.

Again, I commend Chairman Tauzin for calling the hearing and look forward to working with him, as well as Chairman Bliley, Mr. Dingell, Mr. Boucher, Mr. Oxley, Mr. Burr and our other colleagues as we proceed. Thank you.

Mr. TAUZIN. The Chair is now pleased to recognize the chairman of the full committee, the gentleman from Richmond, Virginia, Mr. Bliley.

Chairman BLILEY. Thank you, Mr. Chairman, and thank you for holding this hearing. I ask unanimous consent to insert my full statement in the record.

Mr. TAUZIN. Without objection, and that will apply to all members of the committee.

[The prepared statement of Hon. Tom Bliley follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you, Mr. Chairman.

I want to commend you for holding this hearing on reform and reauthorization of the Satellite Home Viewer Act. It is both timely, and critically important.

What began in the 1970s as a hobby for only a few, has become an important and serious competitor in the market for video programming.

Satellite television now boasts about 10 million subscribers nationwide. Two out of every three new subscribers to multichannel systems are choosing DBS.

Satellite television, in other words, has become what many of us predicted it would become when we first passed the Satellite Home Viewer Act in 1988—a *competitor to cable*.

I have often said that the best way to protect consumers against cable rate increases is through competition, and not rate regulation.

Only competition will discipline cable operators in the long run.

Admittedly, though, our successes in promoting competition have not been without growing pains.

Which explains, in part, why we are here today.

Pursuant to a federal court injunction, about 2.2 million American households will lose access to their satellite-delivered network programming.

This concerns me, for a number of reasons. To begin with, it indicates that some providers of satellite television service have flaunted the law. These providers should account for their willful conduct.

Moreover, in reforming SHVA, Congress must do everything it can to avoid a repeat of this scenario. As many of us noted in the debates over the Telecommunications Act of 1996, telecommunications policy should not be made in the courts.

It should be made *here*, at the Commerce Committee. While I have great respect for our courts, they often look through a very narrow prism when making telecommunications policy. And too often, the result is the situation in which we find ourselves today, where consumers are caught in the crossfire of industries at war with each other.

I am also concerned about the implications of the court injunction on competition. These 2.2 million households play a critical role in promoting competition with cable. Satellite television, in their minds, is simply a better product. This, in turn, forces cable to improve its own product.

But if these subscribers lose their network programming—which is a key component of any offering—*will they be driven into the arms of cable?*

Lastly, I am mostly concerned about the impact on consumers, particularly because *the scope* of the court's injunction is extremely broad. Will the injunction terminate network programming for some consumers who would otherwise qualify as "unserved households"?

The court used a predictive model that is not as refined as the model recently recommended by the FCC. If so, then it's very possible that a large number of consumers may *unfairly and unnecessarily* lose access to their network programming packages.

To this concern, some might say: "No problem, Bliley. These consumers can apply for a waiver."

But I say that *the burden is on the industry, and not the consumer*, to minimize service disruptions. If the law *permits* a consumer to receive these signals, then why put the burden on the consumer?

I note that the FCC has done some fine work in this area, and I commend Ms. Lathen and her staff for their fine efforts in helping Congress find a solution.

I therefore recommend that the parties to this litigation consider asking the court to look at the FCC's model as well. It may help to avoid some unnecessary terminations, and in so doing, help promote competition.

Again, Mr. Chairman, I commend you for holding this hearing, as well as your leadership in this area. You will recall that we spoke last December about this important matter. And at that time, and still today, you have my support in your endeavors.

Chairman BLILEY. I just want to commend you, and I look forward to working with you as we hope to put this moratorium in place, while we sort out these complex issues dealing with local-to-local in the days ahead.

I thank you, and yield back the balance of my time.

Mr. TAUZIN. Thank you, Mr. Bliley. The Chair is now pleased to recognize the gentleman from Texas, Mr. Green—I am sorry, the ranking minority member of the full committee, Mr. Dingell is here. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. I thank you for calling this hearing today on the reauthorization of the Satellite Home Viewer Act. I do wish it were held under other circumstances. It is no coincidence that hearings on this topic are being held 3 days in a row on Capitol Hill this week. We all know too well that this rush to hold hearings on a statute that won't expire until the end of the year is being driven by, quite frankly, a very sorry set of circumstances.

We are faced with a situation in which satellite television providers have flagrantly violated and disregarded Federal law by willfully and repeatedly selling packages of distant broadcast signals to customers they knew, or should have known, were ineligible to receive them. These companies claim that the eligibility test Congress wrote into the law is somehow unfair, imprecise, or otherwise improper. This is, then, their justification for violating the law. They claim the test needs to be changed.

There may be some validity to these claims, and we certainly have an obligation to examine whether it is so. Such a claim in no way, I would note, however, justifies taking the law into one's own hands, thwarting the will of Congress, and consciously choosing to ignore it. And, frankly, I want the people how have been engaged

in that practice to understand that it doesn't generate much kindness up here.

By this purposeful and callous disregard for the law, these companies have now put Members of Congress in a difficult position of having to choose between sanctioning illegal behavior on the part of open and callous wrongdoers and alienating consumers who have come to rely on the service that they were never legally entitled to receive.

There are probably also a number of serious misrepresentations by persons in the satellite industry about how this is Congress' fault. It is not. The source of the wrongdoing and the misbehavior is plain for all to see, and the statute describes it with remarkable clarity. This may be an effective tactic to bring one's gripes before the Congress, but I can't say that it is either right or conducive to receiving a sympathetic ear.

Now where does this leave us? The court correctly found that the law was violated and has ordered satellite companies to cease providing distant network signals to households currently served by local stations. There is no question that the broadcasters in this matter have the law on their side.

Unless Congress, however, acts to overturn the judge's decisions by this Sunday, an obvious impossibility, the first wave of nearly 1 million consumers will be turned off. Clearly, the broadcasters have the clock at their side as well. I am sure the broadcast industry is already focused on this matter and performed this calculus.

I also have little doubt that this calculus has played a role in the apparent stalemate between the two sides in negotiating an independent private settlement of this fiasco. The intransigence of both parties in working to solve this problem is lost on no one and entitles neither side to much sympathy. While it is true that the satellite companies are guilty of breaking the law, and that behavior is inexcusable, it is my belief that neither party comes to this hearing with entirely clean hands.

The broadcast industry has known for a considerable period of time that the model used for determining unserved households was imperfect. Many households who are technically defined as served cannot get an adequate signal over the air. Yet, the industry has been steadfast in relying on a statutory model that unfairly deprives these consumers from receiving a distant broadcast signal. A similar situation obtains with regard to the FCC, which needs to direct its attention forcefully to defining the areas properly, and not properly, served within the different circles of reception.

Clearly, Congress will act to reauthorize SHVA this year. I believe the law we pass will also redefine the standards for determining what constitutes an unserved household. This is entirely proper. There are myriad ways in which new standards can be designed, and key factors that will drive the breadth of change, and this standard is the degree to which we receive assistance from the constituents who have strong views on this matter.

I hope both sides in this matter will consider the situation carefully because each party independently has the power to significantly influence this matter and the outcome. I strongly believe that it is in the best interest of both sides to redouble their efforts in reaching a compromise with all due haste.

Hearing that, I would encourage the broadcast industry to voluntarily, in good faith, minimize the pending disruption to consumers through the waiver process or by other appropriate means. The future of that industry and its commitment to free community-based broadcasting is critically dependent on going forward, distant signal rules being devised rationally outside the frenetic environment created by phone lines, faxes, and e-mail systems.

Mr. Chairman, I thank you for holding this hearing. I look forward to working with you to solve the problems that we confront. I look forward to hearing from the witnesses. Again, I urge the interested parties to take a look at what is going on. You have a lot at stake here, and shooting craps with the public interest is probably something you could be comfortable with, but shooting craps with your own interests in this matter carries with it a significant measure of personal peril. I urge you to look carefully at the situation in which you have placed yourself.

Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman for his statement, and would now recognize the vice chairman of the committee, the gentleman from Ohio, Mr. Oxley, for an opening statement.

Mr. OXLEY. Thank you, Mr. Chairman. I welcome our witnesses.

As has been noted, the issue before is a timely one. Satellite television has emerged in recent years as a major competitor in the multi-channel video marketplace. This is especially true in more rural regions, such as Ohio's fourth congressional district. It is a development of which members of this committee may be justifiably proud, especially the chairman of the subcommittee, who has devoted so much time and effort to this issue.

As we consider the reauthorization of the Satellite Home Viewer Act, I believe it is important that we look at the larger issue of competition in multi-channel video services. Communications policy should be set by Congress and this subcommittee, at the Federal Communications Commission, but not in Federal court.

Three years ago, Congress took back the reins of communications policymaking from an unelected judge when we enacted the Telecommunications Act of 1996.

Satellite policy is one of the few areas largely unaddressed by the 1996 act. But look at the issues involved: competition, localism, the question of who is served and unserved, the survival of free over-the-air TV. I would suggest that the issues before us are more about communications policy than the fine points of copyright law. The current state of affairs isn't serving anybody's long-term interest.

We have a responsibility to the consumer to get the white area issue out of the courts and into the hands of communications policymakers. Last August, I signed onto a bipartisan letter with Congressman Rick Boucher, and several other members of the committee, urging the Commission to adopt a technically accurate pro-consumer definition of a Grade B standard for purposes of interpreting the Satellite Home Viewer Act. I continue to hold the view that the standards for signal strength need to be modernized by the Commission at the direction of the Congress. I hope we can work together toward that goal, and the goal of enhanced competition, better service, and lower prices in the video marketplace.

I yield back the balance of my time.

Mr. TAUZIN. Thank you, Mr. Oxley. The gentleman from Virginia, Mr. Boucher, is recognized for an opening statement.

Mr. BOUCHER. Thank you, Mr. Chairman. I will simply put my statement in the record.

Mr. TAUZIN. Without objection, so ordered.

The Chair now recognizes the gentleman from Florida, Mr. Stearns, for an opening statement.

Mr. STEARNS. Thank you, Mr. Chairman. This is probably perhaps in this subcommittee one of the most important issues, I think, for the 106th Congress, and the significant of sorting through this satellite programming delivery system and how we are going to do it is going to be difficult, because we are trying to protect the local broadcast industry who invests billions in developing their companies and providing the most popular avenue of entertainment for the American people.

We are tasked with determining what is in the best interest of the consumer who deserves, and often demands—fairly, in my opinion—to receive the latest movies, sporting events, and local programming with the most flawless picture and audio quality. I think everyone agrees that the delivery and reception of local television signal is in everyone's interest—from the local broadcaster to the cable industry, to the satellite providers, and to the consumers. The sticking point comes from the transition to the carriage of local signals and the carrying of all the local broadcasters on their satellite systems. I agree that we must insist on a must-carry option for satellite providers just as the cable industry is required to do.

The satellite industry is still developing itself as a natural competitor to cable, and the industry deserves certain regulatory and legislative privileges in the role of a developing competitive force. At the same time, the satellite industry should have to meet the other obligations as must-carry that other MVPD providers are required, for reasons of equity and fairness in the marketplace.

What I am concerned with is, what happens if a satellite provider, for technological reasons, cannot fully comply? Should they be denied delivering any of the local signals until they carry all of them?

I hope, Mr. Chairman, in developing legislation, we consider a limited waiver option for those satellite providers who cannot, for technological reasons, carry all of the local channels. My thinking is that when the must-carry date arrives in the year 2002 or 2003, and a provider still cannot transmit all the local channels, then I think that they should be able to apply for a 1-year waiver through the FCC for the specific markets where they cannot meet the must-carry standards. The satellite provider would have to sufficiently prove to the Commission that they do not have the capacity to achieve must-carry in whatever market they apply for a waiver.

Finally, Mr. Chairman, the transition to local-into-local, I encourage local broadcasters to continue to provide waivers for consumers, as they must have done in many instances for my consumers who have legitimate claims that they cannot receive a proper television signal. Unfortunately, the current Grade B standard, even with the current FCC revision, still does not account for those consumers in the contour who cannot receive a proper signal.

I represent a largely rural district in north central Florida with many constituents who do not live near urban centers or even near television broadcasting towers. These constituents rely on satellite television signals, including the reception of distant signals. But the current predictive, Longley-Rice model still considers many of my constituents as able to receive a local signal, even for those who cannot do so, primarily to topographical reasons such as dense forest covering. So providing waivers where needed, broadcasters will stay on the better side of Congress.

But one other question I have which I hope the panelists will address: Is there a compromise that can be reached to allow consumers in parts of the Grade B who prefer to receive distant network signals during the transition to local-into-local, or would like to have distant signals in addition to their local signals, to continue to receive distant signals? Is there a compensation structure we can arrange so that the satellite providers can sell the distant signals at higher rates than they do today, and then the satellite providers would directly compensate local broadcasters for the number of consumers who receive the additional distant signals? Or would this be a bigger can of worms than it is worth? So I look forward to your response.

Mr. Chairman, I compliment you on having us here.

Mr. TAUZIN. Thank you, my friend. The Chair now recognizes the gentlelady from California, Ms. Eshoo, for an opening statement.

Ms. ESHOO. Thank you, Mr. Chairman, for having this very important hearing. Many of us, or perhaps all of us, are hearing from a cross-section of our constituents about this issue. So it is none too soon for us to hear from experts out in the field.

I want to especially welcome Sophia Collier from Northpoint Technology. I met with representatives from Northpoint last week, when we were home for our in-district work period. In fact, I think if their advanced digital wireless system makes it in the market, that it could make the whole discussion today actually moot. So we look forward to what they are going to be coming out with.

Let me just say something about the issue itself. I don't think—and I have a fuller statement to submit for the record. In reading yesterday's Wall Street Journal, there is a quote that especially caught my eye. Of course, it is from a broadcaster. But he says, "The satellite operators created this problem and shouldn't profit from it. They may operate above the Earth, but they don't operate above the law."

So if we are going to go into "shivering" and SHVA, I think that, obviously, we have the responsibility to correct this and do allow for the local-to-local with the must-carry provisions that others have to provide, but we are going to have to stretch our vision to match the technologies that are going to be coming on, so that the law doesn't antedate itself within moments of the decision and the votes that we take.

So I will yield back the balance of my time, and thank you again for holding the hearing. I look forward to the experts that have come from across the country to guide us. How many? Two, four, six, eight, nine. Well, we are getting better; we have two women at the table. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentlelady. The Chair is now pleased to recognize the gentleman from California, Mr. Cox, for an opening statement.

Mr. COX. Thank you. I will be exceptionally brief. In fact, during this period of opening statements, I have been able to enjoy not only the wisdom of my colleagues, but also read the written testimony of all of our witnesses.

But it is important that we do this, that we have this hearing, and that we move on with the reauthorization of the Satellite Home Viewer Act because the act is going to sunset in 10 months, even sooner now than when we began the hearing.

It is clear that the increase in cable rates that is much remarked upon in several of the testimonies that we will hear shortly has occurred under the existing regime of rate regulation. What we have got to do is find other ways, specifically, ways to enhance competition, so that we can achieve the results that we seek. I don't have any question in my mind that increased competition, far better than price controls, will give us what we are after. It will reduce the cost. It will improve the quality and expand the choices for consumers.

I hope that we can change the rules that prevent satellite broadcasters from offering signals from local TV stations, and do so in a way that does not destroy the advertising base that makes over-the-air local television work.

So I am just anxious to hear what you all have to say. I will yield back. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. We will try to get that as soon as we can. The Chair now recognizes the gentleman from Ohio, Mr. Sawyer, for an opening statement.

Mr. SAWYER. Thank you, Mr. Chairman. I know you have been waiting to hear my opening statement.

I am going to have to deny you that privilege. I will simply insert it into the record. I just have three observations.

I would like to associate myself with the remarks of the gentleman from Michigan. I just wish he had been a little more direct.

I want to associate myself with the remarks of the gentleman from Richmond, Virginia—probably just because it is always a good idea to associate yourself with the remarks of the chairman.

And, finally, Mr. Chairman, I want to make an observation that that question that you cited to us at the beginning, I suspect this is not the first time you have heard this. "Billy, are we going to do anything? And what are we going to do?"—you have been hearing since you have been going out on Saturday night as a kid in southern Louisiana.

[The prepared statement of Hon. Thomas C. Sawyer follows:]

PREPARED STATEMENT OF HON. THOMAS C. SAWYER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OHIO

Thank you Mr. Chairman for holding this hearing today on the reauthorization of the Satellite Home Viewer Act (SHVA). I also want to thank our witnesses for coming to testify before us.

The Satellite Home Viewer Act allows a satellite company to transmit distant broadcast signals into "unserved" households or into those that cannot receive a measured local network signal of Grade B intensity using an over-the-air antenna. Consumers must also verify that they have not subscribed to cable within the past ninety days in order to receive distant broadcast programming. The last time Con-

gress made major revisions to the SHVA was in 1994. A lot has happened since then. Technology has become more advanced—stronger signal penetration. Satellite dishes are much smaller than when they first arrived on the market, and they are much more affordable. As a matter of fact, satellite programming has become so popular that nearly 10 million people subscribe to satellite service. Despite the advances made in this area, the standard being used to determine whether a household can receive a local broadcast signal, in the opinion of many, is not an accurate calculation model and it needs to be revised. Fortunately, we have the opportunity to revisit this law because the Satellite Home Viewer Act expires at the end of this year. However, the circumstances in which we have to consider reauthorizing this Act are unfortunate.

Mr. TAUZIN. Thank you, Mr. Sawyer.

The Chair now recognizes the gentleman from Georgia, Mr. Deal, for an opening statement.

Mr. DEAL. Thank you, Mr. Chairman. I will submit my statement for the record, but I wish to welcome Mr. Fisher from my home State.

As I look to the chart that is to the right, I notice that most of my congressional district is in the white area, and I would concur with that.

I look forward to hearing the testimony of the witnesses and will submit my statement for the record.

[The prepared statement of Hon. Nathan Deal follows:]

PREPARED STATEMENT OF HON. NATHAN DEAL, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF GEORGIA

Thank you, Chairman Tauzin, for holding this important hearing today regarding satellite network television. This is an issue that greatly affects my rural district in Georgia.

As you well know, the conflicts between satellite service providers and broadcasters over service have affected satellite subscribers, and I am quite concerned that many unknowing constituents will lose access to some of their television channels as of next Monday. My personal feeling is that the federal government should be working to open up markets and provide consumers with choices. Many people in my district have only one cable provider to choose from and have no place to turn if they do not like that provider. Whether competition comes from another cable provider or from a satellite provider, I would like to see more competition. For this reason, I feel that we either need to modify the SHVA or assist satellite companies in their bid to provide local-to-local service.

Toward that end, I am a cosponsor of the Satellite Access to Local Stations Act (SALSA) which would establish a mechanism for satellite service providers to offer local network feeds to their subscribers. I also cosponsored the Satellite Consumer Protection and Competition Act of 1998, introduced by Chairman Tauzin in the 105th Congress. I look forward to reviewing similar legislation in the near future to establish rules and regulations for the redistribution or retransmission of local signals by satellite broadcasters.

Some areas of our rocky terrain are simply unable to obtain a clear picture via local broadcasting. Therefore, I believe it is important to devise remedies with respect to the reception of satellite-delivered network signals. Many subscribers have complained that they have spent hundreds of dollars on satellite equipment without being told that they may not be eligible for service of certain network signals. We must also provide subscribers, whose service of network signals is challenged by their local network affiliates, a direct means of determining whether they are still eligible for service.

A fair re-authorization of the Satellite Home Viewer Protection Act is a top priority for me in the 106th Congress. I thank the witnesses for attending this hearing today and look forward to the testimony.

Mr. TAUZIN. I thank the gentleman. The gentleman from Maryland, Mr. Wynn, for an opening statement.

Mr. WYNN. Thank you, Mr. Chairman. I won't have an opening statement at this point. I would like to request to submit at a later date.

Mr. TAUZIN. Without objection, so ordered.

The gentlelady, Ms. Cubin, is recognized for an opening statement. Mr. Largent, then, is recognized. Mr. Shimkus, opening statement. Mr. Green, for an opening statement.

Mr. GREEN. Mr. Chairman, I will submit it, my opening statement. But since I am in an urban area, there is nothing I like better than seeing the weather from downtown Denver, Colorado.

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman for holding this hearing on the Satellite Home Viewer Act.

Currently, over ten million people subscribe to satellite TV, and it is one of cable's most important and viable competitors in the multichannel video programming distribution market.

In the past few months the satellite community received a shock. A federal judge in Miami imposed an injunction on a satellite carriers for illegally transmitting distant network signals to ineligible customers. Many questions arise from this problem. How do we make it so that the 2.2 million people do not have their network signals shut off. Do we have the FCC redefine Grade B Signal? Do we pass legislation allowing for local into local service? If we do pass local into local do we impose a phased or full must carry.

I somewhat understand the appeal of satellite TV. You can receive hundreds of channels, purchase sports packages where you can watch every college basketball game, and have a countless number of pay-per-view channels. But right now you can not watch your local network affiliates. If you own a satellite TV, you would miss out on your local news, sports and weather.

If we do change the Satellite Home Viewer act I hope we act responsibly, and I hope that we maintain the integrity of all of our local stations from the four networks to the two emerging networks and to all of our independent stations especially the minority broadcast stations.

Again Mr. Chairman thank you for holding this hearing.

Mr. TAUZIN. The gentleman from Missouri, Mr. Blunt, is recognized for an opening statement.

Mr. BLUNT. Thank you, Mr. Chairman. I just want to thank you for having this hearing. I began to get calls on this last week. I am sure I am going to get a lot more calls next week, if we don't reach some conclusions pretty quickly. I think it is an important matter we need to deal with in an immediate way, and then, clearly, in a long-term way as we do what we need to do to increase competition, and also to understand the importance of those local franchises. Thank you.

Mr. TAUZIN. I thank the gentleman. And, finally, Mr. Luther is recognized for an opening statement. Mr. Luther.

Mr. LUTHER. Thank you, Mr. Chairman. First of all, I want to tell you how pleased I am to be a member of the subcommittee. As a new member, I am, obviously, looking forward to the testimony of the witnesses. I thank you very much.

Mr. TAUZIN. Probably with bated breath by now.

Thank you, Mr. Luther. And Mr. Fossella for an opening statement. That is a New York signal. Terrific. We can move on.

I want to thank the gentleman.

[Additional statement received for the record follows:]

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Thank you, Mr. Chairman, for holding this hearing.

Although the issue before us is the reauthorization of the SHVA, which is due to expire at the end of this year, the main focus of this hearing will be the frustration and anger that millions of consumers are going to experience this Sunday when such popular television shows as the *Simpsons* and *60 Minutes* will no longer be available over their satellite dishes.

Thankfully, with your leadership and the leadership of Chairman Bliley, the Telecommunications Subcommittee will work toward a 90-day moratorium to give the Committee time to address issues such as local-to-local.

Conventional political wisdom tells us to never get between a constituent and his television set. However, this is not a situation that Congress created, but unfortunately it's one that now has us caught in the middle.

Thousands of satellite tv viewers bought systems under the impression that their providers could supply them with major network programming, but will find out differently on February 28 when that service is ended.

The bottom line is satellite companies are providing their customers programs from networks, such as CBS and Fox, that they are illegally rebroadcasting. If that's not bad enough, they've acted as if they're blameless, and have the gall to encourage their customers to call Congress and complain about the shut off.

I would like to hear possibly from Mr. Hewitt, since there is no representative here today from Primestar, why the company sent out cutoff notices to its customers asking them to contact their representatives in Washington asking them to fix this problem.

The good news is that no satellite dish owner will be left without an alternative to receive network television shows. Fortunately, Congress crafted the *Satellite Home Viewer Act* (SHVA) in a way that enables consumers to receive network programming either from a satellite company or a conventional outdoor roof-top antenna.

Specifically, the SHVA establishes a limited exception to the exclusive programming copyrights assigned to television networks and their local affiliates in order to help ensure that all consumers have access to network programming.

My colleagues here on the House Commerce Subcommittee on Telecommunications and I have worked hard to address this problem. Congress, unfortunately, has no control over the February 28th cutoff date.

There is a short term solution however. All satellite subscribers who have had their network stations terminated should contact his or her local satellite dealer or local television broadcaster to receive a waiver.

Also, a valuable service is available on the web <www.getawaiver.com>. This easy to use web site enables consumers to seek a waiver to ensure the continued delivery of network programming via satellite.

I want to ensure, however, that the waiver process is fair and expeditious, and that the strength of the signals be of a quality that is viewable.

In the coming weeks I am hopeful that the Telecommunications Subcommittee will address several issues dealing with the Satellite Home Viewer Act. The obvious one is the reauthorization of the Act.

The apparent answer to the current problem we are facing with the cutoffs, is local-to-local satellite service. This technology, which we will hear today from 'one of the witnesses, is already a viable option that will allow every household in a local market to receive a local station's signal.

Another advantage local-to-local provides is the ability to carry community-based programming and emergency warnings.

Finally, local-to-local is a viable, but more importantly, a legal way for satellite providers to compete with cable television.

I represent a rural state and support the satellite television industry—they provide a very valuable service to rural television customers. I applaud them for being the only real competition to cable tv and the driving force in lowering cable rates.

If you've been to Wyoming you know that the terrain is really not conducive to receiving local television transmissions. Between the trees, hills, buttes, valleys and the occasional 10,000 foot mountain, it's virtually impossible to receive a quality signal.

The technology that accompanies satellite television is exciting. I am looking forward to the testimony of Ms. Sophia Collier and finding out more about the technological advances that are being made by Northpoint Technology.

Mr. Chairman, I once again thank you for holding this hearing. I look forward to hearing from the witnesses.

Mr. TAUZIN. I invite our panel now to give their statements. As is our usual customary rule, your written statements are part of the record, and as Mr. Cox has pointed out, most of us can read

them, and we do. We want to thank you for that. We ask you within 5 minutes—and I will use this little high-technology light here to signal when your 5 minutes are up. We would like you to summarize—have a conversational sort of session with us—the main points of your written testimony.

We will begin by introducing you. First of all, I want to introduce and welcome Ms. Deborah Lathen, who is the Chief of Cable Services at the FCC. Deborah, also, I want to thank you, on behalf of the committee, for all the efforts you have personally made and your staff has made in helping us prepare for this hearing. We want to thank you for that. We welcome your testimony.

Mr. Charles Hewitt, President of Satellite Broadcasting and Communications Association here is. Mr. Gene Kimmelman, another frequent witness to our committee, Co-Director, Washington Office of the Consumers Union. Andy Fisher, Executive Vice President at TV Affiliates of Cox Broadcasting. Jack Perry, President and CEO of Decisionmark, Cedar Rapids. Ms. Sophia Collier of Northpoint Technology, who has been referred to by the gentlelady from California. Mr. Al DeVaney, President of Newsweb Broadcasting. Mr. John Hutchinson, Executive Vice President and CEO of Local TV on Satellite of Riley, North Carolina. And David Moskowitz, Senior Vice President and General Counsel with EchoStar.

Ladies and gentlemen, we thank you all for coming to share your expertise with us. We will begin the hearing with testimony of Ms. Lathen.

Again, welcome, Ms. Lathen, and thanks for your efforts before this hearing.

STATEMENTS OF DEBORAH A. LATHEN, CHIEF, CABLE SERVICES BUREAU, FEDERAL COMMUNICATIONS COMMISSION; CHARLES C. HEWITT, PRESIDENT, SATELLITE BROADCASTING; GENE KIMMELMAN, CO-DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION; ANDREW S. FISHER, EXECUTIVE VICE PRESIDENT, TV AFFILIATES, COX BROADCASTING; JACK PERRY, PRESIDENT AND CEO, DECISIONMARK; SOPHIA COLLIER, PRESIDENT AND CEO, NORTHPOINT TECHNOLOGY; AL DEVANEY, PRESIDENT, NEWSWEB BROADCASTING, REPRESENTING THE ASSOCIATION OF LOCAL TELEVISION STATIONS; JOHN HUTCHINSON, EXECUTIVE VICE PRESIDENT AND CEO, LOCAL TV ON SATELLITE; DAVID K. MOSKOWITZ, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, ECHOSTAR, AND BRUCE FRANCA, DEPUTY CHIEF OF THE OFFICE OF ENGINEERING AND TECHNOLOGY

Ms. LATHEN. Thank you very much, Mr. Chairman. Mr. Chairman, Congressman Markey—

Mr. TAUZIN. Deborah, you need to turn that microphone on.

Ms. LATHEN. It says it is live.

Mr. TAUZIN. Is it live and it is on?

Ms. LATHEN. That is what it says.

Mr. TAUZIN. Just pull it closer maybe. We are going to work on that. Chairman Bliley has committed to me that, before this Congress is out, this room will be high-tech. We are going to work on that.

Thank you very much, Ms. Lathen.

Ms. LATHEN. Is it working now?

Mr. TAUZIN. Yes, ma'am.

Ms. LATHEN. Do I still get my full 5 minutes?

Mr. TAUZIN. You get it all.

We will reset you.

Ms. LATHEN. Okay. Good afternoon, Mr. Chairman, Congressman Markey, and members of the subcommittee. Thank you very much for the invitation to appear here this afternoon to discuss the Satellite Home Viewer Act and the Commission's recent Report and Order.

I appreciate the opportunity to share with you the Commission's views and perspective on these important issues. I know the Commission shares the subcommittee's interest in promoting strong competition and consumer choice in the multi channel video programming distribution market. We look forward to working with you in the days ahead to promote these shared goals.

We also received the numerous letters and e-mails that you received. We know that 700,000 people stand to lose their network service on Sunday. So you might wonder, well, what has the FCC done about this?

First, I would like to say that when we reviewed these letters and there is a trend that runs through them. Many of the consumers say they want choice. They believe that this is their right. The Satellite Home Viewer Act is a copyright act, but this is about choice in the letters that we have received.

What we did was, our overarching goal was to help as many unserved households, unserved consumers, as we could, and at the same time do that within the limits of the law, and adhere to the intent of Congress. We think we achieved that goal. We improved on two methodologies that the Commission uses. One is testing at the home, and the other is a predictive model. The old Longley-Rice model tested a surrounding area. We came up with a methodology to test at the individual home.

Another thing that we did is that we know many consumers live in one-story homes and not two-story homes. We lowered the antenna requirement from 30 feet to 20 feet for the one-story home and maintained it for the larger buildings.

We also recognize that testing is costly, expensive, and inconvenient. So we came up with a predictive methodology that can be used when the consumer goes to a store, and they can answer the question, "Am I eligible to receive a satellite service?"

The model, the predictive model, also focuses on the home and not the contour of the signal. We want to understand what is happening in the home.

We also understand that hills and valleys and terrain and interference have an impact on one's ability to receive a signal. So, therefore, we attempted to take these factors into account in this predictive model.

We know that this is not enough. It is not perfect, but we have made improvements, and I will show you that when I have opportunity to discuss this map. But it is not enough. Because, as I said consumers say, "We want choice." They don't care about copyright.

But the law says copyright matters, and so we had to adhere to what the law says.

So we couldn't help many of those consumers. Many consumers you see sitting in the red area, we could not help because the law says that is a copyright area.

In our order we have recommended things that you may consider to help those people, things that you have discussed here today, such as local-into-local.

Mr. TAUZIN. Would you move a little closer to the mic, I am being asked by members. We want to hear you.

Ms. LATHEN. Okay. We do need some new technology here. I am almost kissing this microphone.

We knew that we could not help a lot of those people. Those are Prime Time 24 subscribers in the red area. These people can receive a signal. These people are writing you letters because they believe it is their right, that they have a choice to get the most recent technology that there is. The law says, no, this is a copyright area.

What we have said in our order is that Congress can consider things such as local-into-local that you have discussed today. You can consider eliminating the 90-day waiting period. Currently, if you are a cable subscriber, you must wait 90 days, when you sign up for satellite, before you can receive the network signals through satellite. Congress could consider changing that.

Finally, we stated that, because our individual Longley-Rice location model is a more accurate model than the one used by the Miami court, we think that you should consider adopting it as a rebuttable presumption for a service area tied with the loser pay methodology. These are just a few of the suggestions that we make.

I also want to say I am not an engineer. So I have brought a very fine engineer with me here today. He is the Deputy Chief in our Office of Engineering and Technology. He will be able to answer technical questions.

But I look forward to answering any questions that you may have.

[The prepared statement of Deborah A. Lathen follows:]

PREPARED STATEMENT OF DEBORAH A. LATHEN, CHIEF, CABLE SERVICES BUREAU,
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for this opportunity to discuss the ability of American consumers, under the Satellite Home Viewer Act (SHVA), to receive broadcast network television over their home satellite dishes.

We have all struggled lately with a problem involving the television broadcast industry, the direct-to-home satellite industry, the cable industry, and consumers who subscribe to satellite carriers for their video programming. I would like to define the problem and discuss some of the reasons for it. I would also like to describe what the Commission has done to help consumers—our first priority—and what it has not been able to do because of our limited statutory authority. Finally, I would like to suggest some ways that the Congress and the Commission can work together, through changes in the SHVA, to promote competition and give consumers the television choices they want.

THE PROBLEM

Under current law, most Americans are not eligible to receive broadcast network signals (ABC, CBS, Fox, NBC, and PBS) through their home satellite dishes, regardless of whether those signals come from local or out-of-town television stations. This

is because the SHVA, a copyright law enacted in 1988, states that only those consumers who are “unserved” by local, over-the-air television stations are eligible. The SHVA defines an “unserved household” as a household that cannot receive an acceptable television signal using an outdoor rooftop antenna. An acceptable television signal under the statute is “a signal of Grade B intensity,” which is a Commission-defined measure of a signal’s strength.

Congress crafted the SHVA to serve two primary purposes: (1) to ensure the availability of broadcast network programming via satellite to the minority of households beyond the reach of a local affiliate signal; and (2) to protect the integrity of the copyrights that make possible the existing free, over-the-air national network/local affiliate broadcast distribution system.¹ Congress determined that most Americans are, in fact, able to receive an acceptable signal from local, over-the-air stations and believed that most Americans would not need to use a satellite dish to watch network programming. The House Report accompanying the SHVA states:

“[S]atellite carriers are provided an interim compulsory license for the sole purpose of facilitating the transmission of each network’s programming to *white areas unserved by that network*...*The Committee believes that historically and currently the network-affiliate partnership serves the broad public interest.*”² (Emphasis added.)

This legislative history indicates that Congress sought to strike a delicate balance between the copyright interest of the broadcasters and the rights of rural America and others living in areas where they could not receive network programming. The legislative history also shows that as a matter of policy Congress found that local broadcast stations play an important role in delivering news, weather, and public affairs information of local interest. Nothing in the legislative history suggests that Congress ever intended to extend this limited copyright exemption to those consumers in cities and suburbs who clearly receive a local station’s signal.

Furthermore, the legislative history does not indicate that at the time of the SHVA’s enactment Congress’ primary objective was to promote competition to cable via satellite. In fact, a key provision of the Act may have hindered competition. Currently, any consumer who has subscribed to cable within the last 90 days is ineligible to receive satellite-delivered broadcast service. However, it should be remembered that the marketplace has changed significantly since 1988. At that time, the home satellite industry was nascent and just developing. The small, pizza-sized dishes that are familiar now were not available eleven years ago. Additionally, the early home satellite industry delivered its products through direct feeds, not through today’s packaging and retransmission of programming. Today, broadcasters, as well as other video programming creators, have in the satellite industry a viable new means of delivering their services to consumers eager for more entertainment sources. The SHVA, however, has not been adapted to reflect the significant changes in the market or in public policy.

Perhaps the most important development in public policy occurred three years ago when Congress enacted the Telecommunications Act of 1996. Increased competition among multichannel video programming distributors (MVPDs)—particularly competition to cable—has become one of the paramount goals of the Commission. The satellite industry, particularly the direct broadcast satellite (DBS) service, has proven to be the largest and most successful industry at drawing new subscribers and competing in the marketplace. Today there are nearly 9 million DBS subscribers.

In spite of the clear public policies underlying the SHVA and the 1996 Telecommunications Act, we have all witnessed consumers’ frustration when they are not allowed to receive network service through their satellite dishes. In numerous e-mails, letters, and phone calls, consumers have argued that they have a right to get network television in any way they choose. Others contend that they are unable to get local broadcast network affiliates over-the-air and that cable does not come to their house, so satellite is their only source of network programming. Some state that they do not want to subscribe to their local cable company and that they prefer satellite television, but if they subscribe to satellite they cannot get the same network service as cable. At its core, consumers define this issue as a question of choice, not copyright protection or localism.

As the number of satellite subscribers has increased, so has the tension that is inherent in the SHVA regarding those who are eligible to receive network programming via satellite and those who are not. Moreover, the policy of protecting the copyrights and markets of local broadcasters has clashed with the pro-competitive policy of increasing choices among multichannel video programming distributors. Without

¹ See e.g., H.R. Rep. No. 100-887(II) at 20.

² *Id.* at 19-20.

careful consideration by both Congress and the Commission, advancing one policy may thwart the other.

THE LAWSUITS

Recently, the tensions in the SHVA were brought to a head when CBS and Fox sued one satellite carrier, PrimeTime 24, alleging violation of their copyrights and loss of viewers resulting in lost advertising revenue. The broadcasters sought to permanently enjoin PrimeTime 24 from retransmitting any broadcast network signals, distant or local, to “served households.” Finding that most of the subscribers could receive an acceptable local signal (as defined by the Commission’s Grade B standard), the court ordered the termination of satellite-delivered network programming to approximately 2.2 million satellite subscribers nationwide.

THE COMMISSION’S RULEMAKING

Two satellite carriers who sold PrimeTime 24’s service to their subscribers, the National Rural Telecommunications Cooperative and EchoStar Communications Corporation, subsequently filed emergency petitions with the Commission requesting relief for the millions of satellite subscribers who faced termination of their network signals under the court injunction. On November 17, 1998, the Commission issued a *Notice of Proposed Rulemaking* indicating that it would conduct an expedited rulemaking. Less than three months later, on February 1, 1999, the Commission adopted a *Report and Order* that addressed the problem.

The comments to the rulemaking ranged from recommending that the Commission should take no action because the satellite companies had flagrantly violated the law to proposing that the Commission create altogether new values for Grade B signal intensity. Some commenters argued that it was most important to protect local network affiliates and thereby promote localism. Others argued strongly that the most important goal is to provide competition to cable. Many commenters advocated creation of a new, practical and affordable measurement methodology. Virtually all commenters supported creation and endorsement of a computer model to predict signal strength at individual households. There was, however, considerable divergence of opinion on the appropriate parameters for such a model.

The overarching values and goals of the Commission are to protect consumers, promote competition and, in seeking to accomplish these goals, maintain fidelity to the law and intent of Congress.

The Commission worked to balance these policies in the rulemaking we completed on February 1. Our first concern—our overwhelming concern—was to assist consumers to the extent possible under the law. The *Order*, therefore, sought to more accurately identify those consumers who are truly unserved by their local, over-the-air television stations. The result is that consumers who do not receive an adequate over-the-air television signal will be able to receive broadcast stations through their home satellite dishes.

However, the law limited the Commission’s actions to find a broader solution. For example, the definition of an unserved household requires the use of the Grade B signal intensity standard and an outdoor rooftop antenna. Moreover, the Commission has stated that it would be unable to avoid the termination of satellite-delivered network signals to the majority of households covered by the Miami court’s permanent injunction. Most of these subscribers are served by an adequate signal. We have included by way of illustration a map for the Fox affiliate in Charlotte, North Carolina (WCCB, Channel 18). (See attachment.) The map depicts which consumers are predicted to receive at least a signal of Grade B intensity under the prediction model used by the court in Miami and under the new prediction model the Commission created in its rulemaking, as discussed below. Superimposed on this map are black dots representing PrimeTime 24 subscribers in the area. The map demonstrates that a substantial number of these subscribers are able to receive an adequate television signal and are thus ineligible for PrimeTime 24’s service.

In its rulemaking, the Commission was able to achieve its objectives without changing the definition of a signal of Grade B intensity.

Many commenters argued that a change to the definition of a signal of Grade B intensity would solve consumers’ problems. The Commission declined to change the definition because it believes that the Grade B standard is still useful for determining whether a household receives an acceptable picture consistent with the SHVA. The Grade B standard is also used for many other tasks, including defining a television station’s service area (or contour) as well as for the SHVA.

Although the Commission concluded that it has the authority to modify Grade B intensity values for all purposes, we believe that it is significant that Congress tied the SHVA compulsory license to the Commission’s Grade B standard. Congress’ use

of the widely-used Grade B standard in SHVA indicates that the Commission should not have adopted a separate Grade B intensity standard for purposes of SHVA alone. Moreover, additional considerations also led the Commission to conclude that it would be inadvisable to adopt a separate Grade B standard for SHVA purposes. A second set of signal strength values, also called “Grade B signal intensity,” would be likely to create confusion for the segments of the broadcast industry affected by Commission regulations.

In its rulemaking, the Commission created two accurate and readily available tools for determining which households receive an acceptable picture. The Order supports Congress’ 1988 goal of ensuring that truly unserved consumers are able to receive satellite-delivered network signals.

The tools we have created—one for measuring television signal intensity at an individual household and one for predicting signal strength—significantly improve the situation for consumers. Both tools reduce the number of mistakes that were previously made when determining whether a consumer can get an acceptable television signal. Importantly, our endorsement of these tools should reduce the occasionally virulent conflicts between the broadcasters and satellite carriers over how to determine who is eligible for satellite-delivered network service.

1. *The On-Site Measurement Test*

The Commission created an on-site measurement test to determine the actual signal intensity at a consumer’s home. It is accurate, relatively inexpensive, and objective and will classify any household as unserved if that household is unable to receive an acceptable picture using a rooftop antenna. To best serve the intentions of the SHVA and reflect what is actually happening at a particular household, the test must be taken as near as possible to the place where a consumer would install a rooftop antenna. The test also requires the tester to account for the height of the house. For one-story buildings, the testing antenna must be raised to 20-feet, and for houses taller than one-story, the testing antenna must be raised to 30 feet. This is important because a television signal could be weaker closer to the ground than higher in the air. Under an older testing methodology, which was not created to enforce the SHVA, testers were required to make a so-called hundred foot mobile run in the streets surrounding the house, and were required to raise the testing antenna to 30-feet, regardless of the height of the home.

2. *The Prediction Model*

Our second tool, a prediction methodology called the Individual Location Longley-Rice (ILLR) model, is also designed to be accurate, practical, and objective. Like the measurement methodology, it will classify a household as unserved if it is not predicted to receive an adequate television signal. Unlike the measurement methodology, the Commission is unable to mandate the use of any prediction model to create a presumption of service or lack of service at an individual household. The SHVA as currently drafted requires an on site measurement.

The Commission has improved upon existing predictive models in several important ways. These changes more accurately reflect what happens to a television signal between a station’s transmitter and a consumer’s house and include:

- interference from other signals
- land use and land cover (*e.g., vegetation and buildings*)
- changes in terrain (*e.g., hills and valleys*) every $\frac{1}{10}$ of a kilometer
- the height of the household (*e.g., one-story or taller than one-story*)
- the perspective of the individual consumer (so-called “individual mode” analysis) rather than the perspective of the broadcaster (so-called “broadcast mode” analysis).

Several of these factors were not part of previously-used Longley-Rice models, so their inclusion adds significantly to the precision and accuracy of any predictive result. For example, changes in terrain were considered every kilometer under previous models. Under the new model, changes in terrain are considered every $\frac{1}{10}$ of a kilometer—ten times more frequently. Also, under previous models, every house was assumed to be two-stories high, so the model incorporated a hypothetical 30-foot antenna into its calculations. Because a large number of American houses are only one-story, the new ILLR model incorporates a 20-foot antenna for one-story houses and a 30-foot antenna for taller houses. Additionally, the Commission ended the debate over whether vegetation, buildings, and other land cover and land use affect television signals. These factors have an effect, but the Commission could not develop, in the very short time frame before the injunctions took effect, a reliable means of using that information in the model. The Commission expects that the marketplace will create one soon and that the new model will include these factors at that time. The Commission also concluded that interference from other signals

affects a station's transmission. Unlike land cover, interference can be accounted for in the new ILLR model and, therefore, it is included.

By accounting for these factors, the new model has significantly reduced mistakes that other models made. The Commission compared the model used for digital television (DTV) allocations with the new ILLR model. Significantly, the Miami U.S. District Court also relied upon the DTV model for its injunctive decisionmaking. On average across the country, the ILLR model has identified approximately 6% of unserved consumers that were previously and incorrectly classified as being able to receive an acceptable television signal. As can be expected, the numbers vary significantly depending on the impact that the various factors have in any one area of the country. The most significant differences appear to be caused by the presence of mountains or the proximity of television markets to one another, particularly in urban areas of the country such as the Northeast corridor.

a. Examples Under the ILLR Model—For example, both broadcasters and satellite carriers agree that Charlotte, North Carolina, is a representative television market. In Charlotte, the average increase in the population of unserved consumers was 3.3 percent for the Fox affiliate, 6.2 percent for the NBC affiliate, 6.8 percent for the ABC affiliate, and 12.1 percent for the CBS affiliate. Another representative example is Birmingham, Alabama. The average increase in the population of unserved consumers there was 6.9 percent for the Fox affiliate, 5.1 percent for the NBC affiliate, and 5.3 percent for the CBS affiliate. In contrast, Cheyenne, Wyoming, and Charleston, West Virginia, provide examples of more extreme cases. In Cheyenne, which sits on a high, mostly flat, treeless plain, the new model picks up very few households that were incorrectly classified as unserved. For the CBS affiliate, there was a 2.8 percent increase in the number of unserved households; for the Fox affiliate, there was a 0.6 percent increase; and for the NBC affiliate, there was a zero percent increase. In Charleston, WVA. which sits in the middle of one of the most thoroughly mountainous states in the country, the new ILLR model corrects a large number of mistakes that were made by other models. For the CBS affiliate, there was a 23.4 percent increase in the number of unserved households; for the ABC affiliate, there was a 24.9 percent increase; for the Fox affiliate, there was a 25.7 percent increase; and for the NBC affiliate, there was a 20.4 percent increase.

b. Advantages of the ILLR Model—The Commission's new ILLR predictive model has several other advantages. For example, it should significantly reduce the need for and costs of potentially millions of on-site measurements. This will reduce the cost of doing business for the satellite carriers—a cost that would likely be passed on to consumers—and avoid the inconvenience testing causes the industries and the public. Perhaps most importantly for the consumer, the model should answer the question, “Can I get network signals through my satellite?” when he or she purchases a satellite dish. This point-of-sale advantage should improve consumer satisfaction by preventing confusion and mistakes while cutting down on delays in the initiation of network service to eligible subscribers.

3. Other Considerations: TIREM and Confidence Factors

Some commenters to the rulemaking suggested that the Commission adopt the so-called Terrain Integrated Rough Earth Model (TIREM) developed by the Department of Defense for predicting signal strength at individual households. The Commission concluded that this model is neither better nor more accurate than the new ILLR prediction model. Although TIREM shows promise as a tool for predicting signal intensity at individual locations, it is unclear that there is a publicly-available, non-proprietary version that has undergone rigorous review. In some cases, the Commission discovered that TIREM might even be less accurate than the ILLR model.³ On the other hand, the Commission has many years of experience using and evaluating the basic Longley-Rice model on which the new prediction model is formed.

Some commenters argued that the Commission should increase the so-called “confidence factor” in its prediction model from 50% to something higher (e.g., 90%). The term “confidence” in this context is misleading, as the measure does not describe how accurate the model is. Rather, the confidence factor is a statistical way of determining that a model's predicted result is the most likely reflection of the actual signal intensity at a household. Used in that context, a confidence factor of 50% results in a prediction that neither overpredicts nor underpredicts unserved households by weighting the model to produce results that favor either broadcasters or satellite carriers. A predictive model that includes truly served households in an unserved

³See attached Letter to William E. Kennard, Chairman, Federal Communications Commission, from Larry Irving, Assistant Secretary of Commerce for Communications and Information, at 2 n.6 (January 29, 1999) (*ex parte* filing in CS Docket 98-201).

category by gaming the statistical analysis creates several undesired effects. First, consumers could be confused and frustrated. If the model overpredicts the number of unserved consumers, and those consumers subscribe to network service via satellite, they will face disappointment when the broadcaster proves that the consumer is, indeed, served and therefore forces termination of broadcast network service. Conversely, if the model underpredicts the number of unserved consumers, those consumers would be unjustly deprived of broadcast network service via satellite. Second, the SHVA protects the copyrights of network affiliates by making their served households off limits to satellite delivery of broadcast networks. A 90% confidence factor for served households would make many truly served households eligible for satellite-delivered network service, contrary to the intent of the SHVA. Third, if the Commission had endorsed a model that underpredicts the number of served households, broadcasters would have a great incentive to challenge the model's prediction by taking an actual, on-site measurement. Satellite carriers would similarly pursue testing for any model that consistently underpredicts unserved households. Either result would defeat our goal of endorsing a predictive methodology upon which all parties would rely and which the courts would accept to satisfy the SHVA's requirements.

The measurement and prediction methodologies fulfill the Commission's objective of more accurately identifying the truly unserved households that Congress intended to make eligible for satellite-delivered broadcast service. At the same time, the *Order* is true to the congressional policy mandate that broadcast localism should be preserved.

RECOMMENDATIONS

The Commission looks forward to working with Congress in examining alternatives to provide relief for those consumers affected by the injunction.

The Commission and Congress can work together to fulfill their mutual objective of promoting competition. In its *Report and Order*, the Commission did what it could within the scope of its limited authority. The Commission also recommended that Congress consider the following proposals:

1. *Authorize Local-into-Local*—Congress could consider changes to the copyright law to allow satellite companies to provide local television stations to local markets. Cable companies already do this to their distinct advantage vis-a-vis satellite companies. Local-into-local could make satellite carriers more attractive to consumers, thus increasing their competitive standing with cable. Local-into-local will not provide a complete solution for every consumer in the immediate future because of technological limitations on the number of stations that can be retransmitted. Further, some satellite carriers have no plans to retransmit local signals even if they are legally able. Local-into-local is, however, a beginning, and could provide a new option for a large number of television households.

2. *Eliminate the 90-Day Waiting Period*—Before receiving satellite-delivered broadcast networks, the SHVA requires an unserved consumer who subscribes to cable to terminate that service and wait 90 days. Once the cable service ends, the consumer then would face 90 days with no acceptable network service. He or she would be without cable, unable to receive network programming over-the-air, and forbidden to receive broadcast network stations via satellite. This requirement discourages a potential satellite consumer from terminating his or her cable service. The Commission's *Order* recommends that Congress consider eliminating the 90-day waiting period.

3. *Incorporate Prediction Models and Adopt a Loser Pays Mechanism*—The SHVA provides that the loser must pay for any on-site signal tests only when parties are embroiled in litigation over the eligibility of a household. The Commission believes that the loser pays mechanism would be more effective if it were applied prior to litigation and if it were used in conjunction with a predictive model. The Commission suggested that clear statutory acceptance of prediction models for creating rebuttable presumptions of service or lack of service would add certainty to the entire SHVA process. It is important not to codify the new ILLR model specifically, so that improvements can be made as technology develops, but an amended SHVA should incorporate prediction models in addition to maintaining the use of on-site measurements. A broadly applied loser pays mechanism that allocates the cost of testing to the party in error, in conjunction with the more reliable prediction model, would likely give satellite carriers an economic incentive to avoid enrolling consumers who are predicted to be served. Loser pays could also discourage broadcasters from challenging subscribers who are predicted as unserved. Less testing means less burden and inconvenience for the industries and consumers.

CONCLUSION

Mr. Chairman and members of the Subcommittee, I am pleased and privileged to have shared with you my thoughts on how to ensure that all Americans have access to broadcast network television. I also appreciate the opportunity to discuss with you the Commission's recent *Report and Order* and its recommendations to help the public determine whether a particular household can receive an adequate television signal. Our on-site measurement methodology and our point-of-sale predictive model should make it easier for the industries and consumers to comply with the SHVA. Finally, I believe the recommendations I have offered could significantly advance competition to cable and create more and better choices for consumers. Thank you for inviting me to testify today. I am pleased to answer your questions.

UNITED STATES DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION,
WASHINGTON, DC 20230,
January 29, 1999.

The Honorable WILLIAM KENNARD
Chairman, Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: *Ex Parte* Letter in Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act, Part 73 Definition and Measurement of Signals of Grade B Intensity, CS Docket No. 98-201, RM No. 9335, RM No. 9345

DEAR CHAIRMAN KENNARD: I am writing today to applaud the Commission for expeditiously undertaking a rulemaking to define "over-the-air signal of grade B intensity" for purposes of the Satellite Home Viewer Act.¹ It is my hope that the federal courts² will benefit from the Commission's guidance on this important issue.

As noted in my September 4, 1998, letter to you, the definition of "signal of grade B intensity" is key to whether many consumers will have real choice of programming providers. This Administration has strongly supported the development of robust competition in the multichannel video programming marketplace as the way to bring greater viewing choices, lower prices and better services to consumers.

The Institute for Telecommunication Sciences (ITS) of the National Telecommunications and Information Administration has provided sample data on the number of households that could be affected by the various prediction methods under consideration by the Commission.³

ITS took a sample of one network affiliate station from 16 Nielsen Media Research Designated Market Areas (DMAs) ranked by number of households. This sample reflects significant geographic diversity, communities of various sizes, UHF and VHF stations with varying channel numbers, and equal numbers of affiliates of each of the four networks.⁴ ITS maps plotting the results of this sample graphically reveal the variations in the number of affected households of selection by using the prediction methods: FCC F (50,50) Field Strength Charts (47 C.F.R. § 73.699 Figures 9 and 10), Longley-Rice ITM,⁵ and TIREM Version 3.⁶ Maps for the sampled

¹ Satellite Home Viewer Act of 1994, Pub. L. No. 103-369, 108 Stat. 3477 (1994) (codified at 17 U.S.C. § 119).

² See *CBS Inc., et al. v. Prime Time 24 Joint Venture*, Case No. 96-3650-CIV-NESBITT (S.D. Fla. July 10, 1998); *ABC Inc. v. PrimeTime 24 Joint Venture*, Case No. Civ. A. 1:97CV00090 (M.D. N.C. July 16, 1998).

³ A number of commenters in this proceeding supported the adoption of TIREM (Terrain Integrated Rough Earth Model) for predicting unserved households. The original version of TIREM was developed by the Electromagnetic Compatibility Analysis Center (ECAC) within the Department of Defense in the 1960s and has continued to be modified by that organization. ECAC's name was recently changed to the Joint Spectrum Center (JSC).

⁴ For a summary of this data, see the attached table entitled "Network Affiliate Sample from 16 DMAs."

⁵ Longley-Rice ITM (Irregular Terrain Model, Version 1.2.2) is available to the public from an NTIA web site at <http://elbertits.blrdoc.gov/itm.html>. The files at this site include source code and model description.

⁶ TIREM Version 3 is available to the public from an NTIA web site at <http://ntiacsd.ntia.doc.gov/msam>. The files at this site include the source and executable code and a 30-arc second topographic database (*i.e.*, the database contains the terrain elevations in height above mean sea level for every 30 arc-seconds of latitude and longitude for the earth's surface). This version is approximately 20 years old and was developed by ECAC/JSC. For purposes of this sample, ITS modified TIREM Version 3 to permit access to the 3-second topographic data-

stations are available at http://flattop.its.bldrdoc.gov/figs_ntia/gifs_ntia_012899/index.html.

While NTIA takes no position on the specific definition that the Commission should adopt, we urge the Commission to adopt a definition and measurement that will best promote competition and consumer choice.

Thank you for your consideration of these views.

Sincerely,

Larry Irving.

Enclosures

cc: The Honorable Susan Ness
The Honorable Harold Furchtgott-Roth
The Honorable Michael Powell
The Honorable Gloria Tristani
Deborah A. Lathen, Chief, Cable Services Bureau

NETWORK AFFILIATE SAMPLE FROM 16 DMAS

[CS Dkt. No. 98-201, RM Nos. 9335, 9345]

Prepared by the Institute for Telecommunication Sciences

Rank	DMA	Station-Channel	Network	Model: Households (Grade B or Greater)		
				FCC	Longley-Rice	TIREM
17	Phoenix	KSAZ-10	FOX	818,000	815,000	830,000
2	Los Angeles	KABC-7	ABC	4,627,000	4,549,000	4,688,000
5	San Francisco-Oakland-San Jose	KTVU-2	FOX	2,504,000	2,424,000	2,403,000
26	San Diego	KNSD-39	NBC	851,000	1,026,000	1,082,000
7	Washington, D.C.	WRC-4	NBC	2,324,000	2,309,000	2,483,000
16	Miami-Ft. Lauderdale	WFOR-4	CBS	1,477,000	1,477,000	1,506,000
3	Chicago	WMAQ-5	NBC	3,197,000	3,258,000	3,604,000
23	Baltimore	WMAR-2	ABC	2,686,000	2,685,000	3,130,000
21	St Louis	KTVI-2	FOX	976,000	997,000	1,069,000
28	Charlotte	WBTV-3	CBS	1,132,000	1,111,000	1,541,000
24	Portland	KOIN-6	CBS	778,000	716,000	735,000
19	Pittsburgh	WTAE-4	ABC	1,251,000	1,152,000	1,482,000
88	Columbia, S.C.	WIS-10	NBC	479,000	518,000	878,000
93	Tri-Cities, TN-VA	WJHL-11	CBS	576,000	262,000	309,000
59	Richmond-Petersburg	WRLH-35	FOX	363,000	471,000	629,000
9	Detroit	WXYZ-7	ABC	1,978,000	2,022,000	2,316,000

Mr. TAUZIN. Thank you, Deborah.

We will now welcome Mr. Hewitt, President of Satellite Broadcasting and Communications Association, the SBCA.

STATEMENT OF CHARLES C. HEWITT

Mr. HEWITT. Thank you, Mr. Chairman. I appreciate the opportunity to have this talk.

We have distributed maps that were to be attached to our testimony. We will unable to get it until this morning. We would like to have that admitted, too.

Mr. TAUZIN. Without objection, that will be admitted.

Mr. HEWITT. Mr. Chairman, this year, under the leadership of USSB and Consumer Electronic Manufacturing Association, in conjunction with ourselves and the NAV, we launched a program to help retailers recognize the type of off-air antenna that was nec-

base commonly used for broadcast studies. TIREM Version 4 is the latest version of the model also developed and maintained by the JSC. This model improves on the 20 year-old coding used in Version 3 but fundamentally uses the same technical algorithms and yields similar but not identical results as Version 3. This version of the model, however, has limited distribution with export restrictions under the Arms Control Act (22 U.S.C. § 2751 *et seq.*) or Executive Order 12460. While NTIA is a Federal agency eligible to receive TIREM source code, other organizations may not be eligible to receive TIREM Version 4 source or executable code without explicit permission from JSC.

essary by providing them maps to illustrate what kind of antennas would be necessary to be used.

We think this program is going to be very successful, and we are going to push very hard for it. Millions of Americans will be able to use off-air antennas and actually see the higher-quality signal than they could through their cable system. However, millions of Americans will not be able to use an off-air antenna and receive any kind of a signal. That is why we are here.

We commend the FCC for an expedited rulemaking. Deborah and her staff did a wonderful job with what they had to work with. But, unfortunately, they did not have the authority necessary to do what we believe needs to take place.

Concerning the Grade B standard, in paragraph 95 of the rule, I quote, "There may be better, but still objective standards that could be developed for identifying unserved households." Paragraph 43, quote: "We do not believe we have the authority to create a special Grade B solely for the purposes of SHVA." They have also stated that they don't have the right to mandate a predictive methodology for industry to use. Obviously, a mandated would put us all on the same book.

Realize the 1952 standard predictive methodology was created to determine interference between transmitting signals, to determine who could be where, and how, at what power structure. It is based on the 50/50/50 47 DBU, and as a policy, that means that 50 percent of the people in an area, 50 percent of the time, receive a signal, 50 percent confidence that it will happen. We do not believe this is good telecommunications policy to determine whether or not a person has an acceptable reception system.

Now the FCC did improve the 20-foot antenna height from the ground on a single home, up to 30 feet for a two-story house. The interference issues, the vegetation and land use recognition, although this map will not contain that because we don't have the application of it, has been very helpful. Unfortunately, ghosting is not taken into consideration in their activities.

This map over to your right is one map of four maps that we have put together using what is called TIREM 4. TIREM 4 is a very similar type of system that Longley-Rice is, which is what the court decided and what has been used by the FCC, except for it is much more sophisticated in using a great deal more detail in the topographical area.

In fact, this map does not contain interference. It does not contain land use and vegetation, which the FCC has already recognized as being necessary, nor does it contain ghosting problems that are contained in a signal. Every place you see red is a place that the TIREM says is an eligible receiver that Longley-Rice says is not an eligible receiver.

Of the four maps we show, three of them, actually, show a very interesting phenomenal. There are areas in all three of those cities inside Grade A that do not receive a signal. There are a good number of geographic regions within Grade B, and converse to that, outside of Grade B there are places where the consumer is served with a Grade B 47 DBU signal, 47 DBU being the acceptable signal.

Congressman, Mr. Chairman, we are asking for five solutions to be enacted here by the committee and by the Congress.

The first is to provide the FCC authority to establish a specific standard on behalf of the SHVA.

Second, to provide them the authority to mandate a predictive methodology for us to be utilized.

Third, for those almost 2 million who ultimately are destined to be turned off under the Miami court rule, that that be left to the FCC to determine if the local broadcaster is being truly harmed by those consumers retaining their signal.

Fourth, that the FCC establish a system for a very consumer-friendly method of terminating those consumers who should be disconnected under the law.

And, last, that local-to-local be authorized and that there be a 3-year phase-in for full must-carry, and also 1 year for retransmission consent to be negotiated.

Mr. Chairman, in closing, I have one 20-second film I would like to show you of a broad author who lives in Dillard, Nebraska. He has been notified that he is going to be disconnected. This is the signal he now receives under the Longley-Rice methodology. In just a second, it will show a side-by-side film, what it shows when you have a distant network signal applied. That is the distant network signal, and now a side-by-side comparison.

We don't think in 1999 that this is an acceptable standard, and we believe the FCC should be given the authority necessary to accept a standard—to create a standard for SHVA and to create and mandate a predictive methodology to support it.

Thank you.

[The prepared statement of Charles C. Hewitt follows:]

PREPARED STATEMENT OF CHARLES C. HEWITT, PRESIDENT, SATELLITE
BROADCASTING AND COMMUNICATIONS ASSOCIATION

Mr. Chairman, and members of the Subcommittee. I am Chuck Hewitt, President of the Satellite Broadcasting and Communications Association. We are the national trade association for all the segments of the Direct-To-Home satellite industry. That includes the Direct Broadcast Satellite companies that offer subscription services to consumers; the C-Band (large dish) side of the industry; the major programmers who license their offerings to service providers for viewing by consumers; the manufacturers and distributors of home satellite receiving equipment; and the retailers, mass merchandisers and cooperatives who are the direct point of sale to the consuming public. The SBCA is one of the few trade groups in Washington, D.C. that encompasses all the elements of the industry.

Mr. Chairman, I greatly appreciate your inviting me to testify before you today. While I have had that privilege many times in the past, I can't remember when a hearing such as this one has taken place at such a critical moment. It comes at a time when the DTH industry is beginning to make great strides to be the kind of competitor to cable that is envisioned by the policies set by this Subcommittee, the Congress and the Federal Communications Commission. Yet, in spite of the hope set for our industry, it is still besieged by competitive and regulatory stumbling blocks that have to be removed if satellite is to maximize its potential to deliver a superior video service to American consumers.

Our industry needs Congressional help to find a better way to deal with the vexing problem of "white areas" and the issue of how an objective television viewing standard can be devised to ensure consumer satisfaction. The Federal Communications Commission has just tried to address the problem, but, as I will discuss later, was only able to make modest adjustments in this area. The FCC stated clearly that it did not believe it had the authority to go further than it did in dealing with television signal strength issues as they relate to the Satellite Home Viewer Act. Our request to you today is to give the Commission that authority to settle this issue once

and for all so consumers together with our industry can know with finality their rights with regard to the reception of distant network signals.

The backdrop for this hearing is critical. There is enormous frustration in the satellite video marketplace because there has been no satisfactory resolution to the “white area” crisis. Instead, consumers are being trapped between the desire of the local television broadcast affiliates to rightfully maintain the viability of their service areas and the need of the satellite industry to be able to compete on equal grounds with cable. The result has been predictable. Consumers—the satellite television viewing public who is supposed to benefit from video marketplace competition—is instead being made an innocent victim because of a vague and impractical regulatory regime established by the 1988 Satellite Home Viewer Act.

A very non-consumer friendly result is becoming the hallmark of the current “white area” system under SHVA. Consumers who, while located within the Grade A and B contours of their local television station, still remain “unserved households” by virtue of the fact that they are not able to receive an acceptable signal using a conventional outdoor rooftop antenna. Finding a remedy to this situation constitutes a major challenge: how to identify these consumers so they can receive the distant network service that they are entitled to receive under the SHVA.

The DTH satellite industry has already been supplying consumers with television antennas for a long time. We believe that every consumer has the right to receive network television service. To the extent that acceptable local signals can be received off-air, our companies make every effort to see that their subscribers have the proper antenna equipment to facilitate their reception. So the claims of the broadcasters notwithstanding, satellite providers have been diligent regarding the ability of their subscribers to pick up local signals.

A great debate has been taking place over the effectiveness of the Grade B standard as an appropriate measurement to apply to households under the SHVA. The standard was established by the FCC in 1952 for the purpose of, among other things, predicting the propagation area of a television signal emanating from the tower of a local broadcaster. Its main parameters are that its contour, when drawn on a map, should indicate a service area in which 50% of the households should receive a signal of 47 dBu 50% of the time with a 50% confidence factor. It is designed to predict areas of service coverage and prevent interference from other stations. However, it is not a signal reception standard, and there is no guarantee, and never was there intended to be one, that a viewer located in the Grade B will, by necessity, receive an adequate television signal using a conventional rooftop antenna.

Nonetheless, that is the standard which is currently applied to consumer households through the SHVA, and which has now become so contentious. In its place, consumers deserve a receiving standard for the express purpose of applying the “white area” provisions of the SHVA. It should be based on the realities of today’s electronic environment, not on the outdated assumptions that governed adoption of the Grade B standard in 1952. It should be promulgated to benefit consumers while at the same time taking into account the needs of the free, over-the-air marketplace.

In an attempt to accomplish this, two of our member companies, the National Rural Telecommunications Cooperative and EchoStar, petitioned the FCC to establish a Grade B standard solely for the purpose of the SHVA. The FCC launched a rulemaking proceeding, and we assured both the Commission and the broadcasters that it was not our intention to “shrink” the Grade B contour as some have claimed. In fact, the Grade B contour is not relevant in this instance because we were seeking a standard based on signal reception. We simply wanted a better definition of signal strength at the receiving location that would enable our industry to determine in an exact manner which households should be classified as “unserved,” in the context of a realistic appraisal of the current television signal propagation environment.

Frankly, Mr. Chairman, a lot has changed since the FCC developed its Grade B standard in 1952. Areas that were once rural are suburban or even urban today. There is substantially more interference in the environment today, caused by the exponential growth of wireless electronic devices, microwaves, computers and many other electronic usages of modern society, as well as more automobiles and electric utility lines. Also, the existing models used to determine Grade B signal strength do not consider the effects of signal propagation interference, vegetation or land use (buildings), important components which must be taken into consideration. Within the household, other factors also come into play such as “ghosting” on the television screen or the use of splitters to feed several video devices at the same time. So it was important to our industry that these factors be taken into consideration so as to make as realistic an accounting as possible of the current climate for television signal reception.

The FCC is to be commended for implementing its rulemaking in such a short period of time. Chairman Kennard delivered the Commission's report and order on time and as promised. *The Commission was clear to state, however, that its authority in this area was limited under SHVA.* In light of this circumstance, the rules that the Commission promulgated make some minimal changes with regard to the impact of the Grade B standard on SHVA consumers. So the benefit to consumers, unfortunately, is only slight. Nonetheless, we believe that there is a lot more in this area that can be accomplished, and it is important that the FCC be given the go-ahead to deal with it.

On the positive side, the Commission adopted certain measures which can help make a more realistic assessment and prediction of signal strength at a television household possible. While they do not directly address the principal hurdle faced by a SHVA consumer—*i.e.*, whether or not a truly acceptable and viewable television picture can be received with a conventional rooftop antenna—the rules are a first step toward addressing this core issue. First, it provided for a new measurement process at an individual location, requiring five individual measurements at a pre-determined location instead of the 100-foot mobile run measurement that is utilized by broadcasters today.

Second, the Commission endorsed a slightly modified version of the Longley-Rice predictive methodology for determining beforehand whether a consumer can receive a Grade B strength signal. The advantage of using any predictive methodology is that it reduces the cost and necessity of conducting an on-site measurement. While there are several different predictive models to choose from, it is important to remember that any model is only as good as the technical parameters that are fed into it. That is an extremely important qualification which, as I will graphically demonstrate to you, dictates varying results, each with different consequences as to whether or not a consumer household actually receives a Grade B signal and is thus either “served” or “unserved.”

The satellite industry, on the other hand, proposed using a highly accurate prediction methodology termed Terrain Integrated Rough Earth Model (TIREM) developed by the Department of Defense and the National Telecommunications and Information Agency. For reasons explained in the FCC's Report and Order, it elected not to endorse TIREM at the present time. It elected instead to remain with the existing Longley-Rice methodology, slightly modified to take into account interference from other stations, antenna height variations, and, eventually, the effects of buildings and vegetation. In any event, the appendix to my testimony will show the greater accuracy with which the TIREM model can predict Grade B coverage at an individual location, compared with the Longley-Rice Grade B propagation model.

The Commission acknowledged that its traditional Grade B contour methodology does not take into account many topographic features in a station's area; does not factor in interference from other electronic signals; and does not include vegetation and land use. It stated that the existing Grade B model is an “*imperfect methodology for predicting whether an individual household can receive an adequate signal.*” (para. 67; our emphasis) As I stated earlier, it is designed to predict television coverage at certain given levels within a local television station's service area. That is the fatal flaw in trying to apply it to the “white area” provisions of the Satellite Home Viewer Act to consumer television signal reception because the Grade B standard as used in SHVA up to now has been formulated by the FCC as a propagation model, not a receiving standard. That is why we are here today trying to seek a more precise and equitable approach for the satellite consumers around the country who deserve better treatment with regard to their right to receive television service.

I would also like to clarify at this point that a Grade B contour line, by itself, is not an indicator of whether or not it is possible to receive a viewable television signal within the area depicted by the contour. It is not a guarantee to consumers that an adequate picture will be available, but is simply a predicted zone of signal propagation for the purposes which I cited above. That is a very important distinction to make as you try to make a determination about the best course by which consumers will benefit.

In any event, the Commission did adopt in its Report and Order the predictive methodology termed the Individual Location Longley-Rice model (ILLR). It is a point-to-point model that had been previously adopted by the Commission in the digital television proceeding and can be used to identify at a particular location—namely a consumer household—television signal intensity. The model, however, does not presently account for the effects of land use and vegetation, and those factors when they become available must be factored in to give more accurate predictions in the current environment. I would also note that the FCC was very careful to point out that application of the ILLR model would be for the purposes of SHVA

and would not replace the Commission's standard procedures for predicting signal strength and service contours for individual television stations.

In its Report and Order, the Commission also pointed out that "the Grade B signal intensity standard was originally designed to depict a television station's service area, and that it may not address all the factors that determine the quality of a consumer's television picture" and later that, "the Grade B standard is still useful for determining signal strength and signal intensity, *there may be a better, but still objective, standard that could be developed for identifying unserved households.*" (para. 95; our emphasis) As I already stated however, the Commission does not believe it has the authority to go further than it did. Because Congress established the Grade B standard as the benchmark for "white areas" under the SHVA, the Commission felt constrained from exploring other alternatives.

It is important that I describe for you now the effect of different methods of identifying those areas within Grade A and B contours that cannot receive a viewable television signal with an outdoor, rooftop antenna. The attachments to this testimony comprise maps from Atlanta, GA, Miami, FL, Missoula, MT, and Mobile, AL. The set for each city shows how Grade B can be measured at individual locations using the ILLR methodology and TIREM, using the 50/50 probability data at the normal Grade B signal strength of 47 dBu for low-band VHF stations and 56 dBu for high-band VHF stations. We have overlaid the ILLR and TIREM results on the FCC's standard Grade A and B contours.

1) *The Individual Location Longley-Rice* model that the Commission just adopted in its SHVA rulemaking. This technique, in addition to identifying signal strength characteristics at specific sites, also takes into account interference from other stations, but does not yet include the effect of buildings and vegetation. As the Commission has recommended, the addition of data dealing with land use and vegetation will improve the utility of the ILLR. We are working to obtain that information and plan to apply it to the model if and when it is available.

2) *The TIREM model* which the satellite industry recommended that the FCC adopt as the preferred method of signal measurement. It identifies more accurately the effects of specific topographic features along a transmission path than does the ILLR model, and, from the perspective of predicting whether a receivable signal is present at a particular location, it is much more accurate.

The use of TIREM also helps to raise the principal issues we are trying to address. We have clearly stated that it has never been our intent to reduce the Grade B coverage area. We are only trying to identify more readily those locations and households which cannot receive a Grade B intensity signal with a conventional rooftop antenna. The Grade B contour originally implemented by the FCC is solely for the purpose of defining an area of signal propagation from a television transmission tower. It is not meant to be a predictor of signal reception at a specific household, but satellite consumers must have that ability under the SHVA. That is why it is so important that the Congress give the FCC the authority to formulate a receiving standard for consumers so their viewing rights under SHVA can be exercised. In fact, there may even be other methods for predicting individual location receiving strengths. The Commission, as the expert agency in this field, should be given the task of searching out the best possible technique so as to avoid in the future what we are witnessing today.

The fundamental question before us now is how do we accomplish this? The Commission has acted to what it believes is the extent of its authority. It endorsed a slightly improved model for predicting Grade B signal strength but was not able to go beyond that, namely the development of a standard governing signal reception. In order to address these critical competitive issues, we would ask you to undertake the following actions:

- *Grant the Commission the authority it needs to implement a television receiving standard for the purpose of accurately identifying under the SHVA an "unserved" household.* That should not be too difficult a task. For many reasons, Grade B may not be an acceptable viewing signal strength for many consumers. While the Grade B standard was established in 1952 for black and white television, consumers' expectations today and their reliance on television for entertainment and information demand much higher quality reception than before. Also, loss due to ghosting, the use of splitters, and other in-home interference factors can add to signal deterioration. In our filings with the FCC during its recent SHVA rulemaking, we suggested that a 90/90 probability was the standard which was more applicable under the existing television environment. Imagine, for example, telephone service based on the same principle as the current Grade B television standard. It would hardly be satisfactory, and in this day and age, consumers demand the same reliability from their television service as

they do from their telephone company. Therefore it is important that the FCC embark on such a rulemaking as soon as possible.

- Because the FCC concluded that it lacked the authority to mandate the use of any predictive methodology in its rulemaking, it could only “endorse” the ILLR as a predictive methodology. As noted above, the SBCA believes the TIREM model is much more accurate and should be used for SHVA purposes. *In any event, the Commission needs the authority to adopt a model that will enable a consumer to know with a reasonable degree of certainty whether or not, at that location, a television signal at the new standard that has been created can be received with a conventional rooftop antenna.*
- Consumers have become the innocent party in the “white area” dispute. *Congress should take their interests into consideration by directing the FCC to determine whether or not local broadcast affiliates are being harmed by continued distant network service to existing satellite subscribers.* The standard proposed in S. 303, legislation introduced in the Senate by Senators McCain and Burns which the satellite industry supports, is whether or not continued service would cause “projected loss of audience or revenue of such a magnitude as to cause material harm to the viability of local stations.”
- *Congress should direct the FCC to work with the affected parties in order to develop a joint, consumer-friendly approach to terminating distant network service to any households where distant network service is required to be disconnected.* Consumers deserve an orderly, agreed upon transition so they can continue to receive network signals by other means and with a minimum of disruption.
- *Finally, it is important that Congress authorize local-into-local satellite service quickly.* It can go a long way to reducing the uncertainty attached to the “unserved” household approach because in many areas local affiliate service by satellite would be offered in conjunction with a satellite subscription package. For that to happen however, we recommend that 1) a reasonable transition period be granted for a satellite carrier to attain a full must-carry status; three years is a reasonable period within which a satellite carrier could comply; and 2) a period of one year be given to allow a satellite carrier to obtain retransmission consent for the carriage of local broadcast signals; that is what the cable industry was granted in the 1992 Cable Act, and satellite providers should be afforded the same benefit.

It is important to note, however, that the advent of local-into-local service will not obviate the need for distant network signals. There will still remain a large population of satellite viewers in the smaller television markets, or those who live in rural areas, who will not have access to either local-into-local service nor be able to receive adequate local television broadcasts with a rooftop antenna, even when the changeover is made to digital terrestrial broadcasting. Distant network service via satellite will be the only means for them to receive the news, sports and entertainment programming which other viewers in more metropolitan areas already take for granted. We urge Congress to be aware of this issue because it, too, will be impacted by whatever new “white area” rules will be in effect at the time local-into-local service is available.

I would now like to turn my attention to another issue that, while not implicated in the discussion over SHVA, has serious ramifications for the satellite industry. I am referring specifically to the Northpoint project which would entail the delivery of a subscription video package not MDS or MMDS in the frequency bands reserved for the Direct Broadcast Satellite service (Ku-Band). I will not delve into the engineering and technical arguments as to why the Ku-Band is not the right place for the Northpoint proposed service. I will state for you as a general matter, however, that while the Northpoint concept fits well in a professionally engineered environment, it does not work with receive systems installed for consumers where antenna placement cannot be engineered. Furthermore, interference from the Northpoint system is probably unavoidable. It is simply a question of how much will result from the reflections of the Northpoint beam from buildings, trees, poles and towers. But engineering considerations are not the only factors involved in this matter. There lies another, equally important consideration which has been given short shrift, namely the policy grounds surrounding this issue. They have not been adequately considered, but are nonetheless a vital, if not the most important, component in the mix.

The primary issue is why a basically terrestrial service utilizing microwave techniques be allowed to share the spectrum reserved for DBS. It is not for lack of spectrum at other locations that can accommodate the system application that Northpoint is proposing. Yet ironically, the FCC is considering the use of the Ku-Band for just that purpose. DBS and Northpoint are dramatically different services, and what Northpoint is proposing is hardly new. What is new is the idea that a

transmission technique such as Northpoint's should be allowed to share in a band which was not intended for that use nor for any other use except DBS.

We are deeply concerned that, whatever technical evaluations are made by the Commission of the Northpoint project, *they do not factor in the broader policy issue of satellite competition with cable, regardless of the outcome of the FCC's tests.* Frankly we are puzzled that Northpoint would even be considered for the Ku-Band just as DBS is beginning to make its mark in the video marketplace. *Why would the Commission want jeopardize the only viable competition to cable and, in that regard, even entertain the thought of frequency sharing by a fundamentally different video transmission technology.* SBCA believes that it would be a tragic decision to allow such sharing to occur, irrespective the arguments that have been submitted in an attempt to show that it may be "technically" possible to avoid interference to DBS receiving systems. It would be devastating to discover too late that an entire subscriber base would be vulnerable to interference, simply because policy grounds were dismissed in favor of "technical" assurances. We would urge the Subcommittee to direct the Commission to find other, more suitable frequency locations for the Northpoint service.

In summary, Mr. Chairman, I would like to reiterate that this hearing has come at a most propitious time. Now more than ever consumers need the intercession of the Congress to look after their interests. They deserve a clear solution to the Grade B dilemma, and only the FCC, with authority granted by you, has the expertise to produce standards and rules that will be truly helpful.

I have pointed out to you how much more accurately the TIREM predictive model can be in identifying, on a point-to-point basis, individual locations where a Grade B signal cannot be received. But the FCC also needs Congress' authority to proceed with a rulemaking to adopt a predictive methodology that is specifically designed to locate accurately "unserved" households. We urge you to act quickly to alleviate the impact the current environment is having on consumers. Thank you for the opportunity to testify before you today.

Mr. TAUZIN. Thank you very much, Mr. Hewitt.

We will now hear from Gene Kimmelman, Co-Director of the Washington Office of the Consumers Union.

STATEMENT OF GENE KIMMELMAN

Mr. KIMMELMAN. Thank you, Mr. Chairman. On behalf of Consumers Union, publisher of Consumer Reports, we appreciate the opportunity to testify today.

Without even seeing it, I would like to warmly welcome your moratorium legislation. I appreciate your collaboration with the chairman to attempt to resolve this issue before consumers are harmed.

I would like to bring a slightly different perspective to this issue and give you two choices. Cable rates are up about 22 percent since passage of the 1996 act. That is between 3 and 4 times the rate of inflation.

The whole purpose of the act was to inject competition into the market. Obviously, we are not seeing enough of it. In the few communities where there actually are head-to-head wireline competitors, rates on average are at least 10 percent lower than where there is a monopoly, and we have examples in our testimony of communities where there is head-to-head competition now where there have been no rate increases the last year or 2 years, as compared to rates going up three to four times the rate of inflation, where there is only cable company. That is the underlying market problem out there for the vast majority of consumers. They don't have the competition they were hoping for, they were promised.

You are going to hear—you have already heard some; you are going to more—important principles, business concerns that are totally legitimate. The concern about localism will come next from

broadcasters—a totally legitimate concern, something that consumers care a lot about. The concern of the satellite industry about providing a good product to the consumer, equally legitimate, and normally, we are in the position of suggesting that you balance all these legitimate business and consumer concerns.

However, I have to suggest a different model this afternoon. With regulations that do not work and regulations expiring, unless you do what Mr. Markey suggests and go back and really crack down, it seems to me there is no balancing. Consumers are paying, even with 5 percent cable rate increases per year, about \$2 billion more at the hands of a monopoly each year. There are some advertising dollars at stake for localism. There is some money for an industry that wants to compete. There are a number of other competitors who need changes in the law to try to come in and take on cable. Two billion dollars, though, coming out of consumers' pockets per year from a monopoly, if we are not going to go back in and do something meaningful with cable rates through regulation.

I would like to suggest that you not balance these interests; you declare a war on the monopoly and do everything in your power to break bottlenecks, impediments to competition. It starts with changes in the copyright law. Many of the things that Ms. Lathen suggested from the FCC we heartily endorse. Making sure that everyone can get access to local broadcast signals, every competitor, every potential competitor to cable, making sure that copyright fees are equalized, making sure that we have a compulsory license that is comparable for all multi-channel video providers, making sure people can get a clear signal for broadcast stations—these are all critical changes in the law that are absolutely essential. We need them now.

Mr. Dingell points out a number of very troubling issues related to whether the law has been broken in regard to the Satellite Home Viewer Act. I can't speak to whether it has or has not. There clearly has been aggressive marketing. The last thing in the world I would suggest is that you condone breaking of the law. I think Mr. Dingell had it absolutely right.

However, think of this perspective: For the consumer who has been urged by all in Congress to go out and look to competition as the solution, to go out, get off your couch, got out to Circuit City, go out to some store, and invest in a competitive alternative. If you don't like your cable TV company or if you are not willing to pay their price, invest hundreds, if not more, dollars in an alternative. Is it fair to tell that consumer, "You are going to lose broadcast signals" because something isn't working right? Maybe someone broke the law. I would suggest that that is not a fair resolution of this matter.

And, more importantly, looking forward to the future, if we want to promote more competition, it will chill that marketplace if, all of a sudden, consumers have to worry about investing all that money and not getting the product that is promised.

So, in conclusion, Mr. Chairman, I urge you to move expeditiously, as fast as possible with legislation that truly promotes more competition to cable. Thank you.

[The prepared statement of Gene Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR, WASHINGTON OFFICE,
CONSUMERS UNION

INTRODUCTION

Consumers Union¹ believes that the need to promote more competition in the cable industry could not be more obvious. Cable rates have risen about 21 percent since passage of the 1996 Telecommunications Act² and continue to climb three to four times faster than the rate of inflation (see Attachment A). Even the chairman of the Federal Communications Commission (FCC) admits that rates are going up excessively under his agency's "liberal"—in other words, meaningless—regulatory structure (see Attachment B). As a Congressionally mandated prohibition on regulating the most popular cable channels approaches (March 31, 1999),³ now is the time to act.

LACK OF COMPETITION TO CABLE

So far, despite rapid growth at the high end of the market, satellite television has failed to offer true price competition to cable. In inflation-adjusted dollars, cable rates are rising just as fast today as they did before the Direct Broadcast Satellite (DBS) industry began offering service.⁴ With up-front costs (for the satellite dish and related installation charges) running three to five times the cost of installing cable, and lacking carriage of local broadcast channels, satellite TV has been unable to discipline pricing for the most popular cable services.

In addition, nearly one-half of satellite TV subscribers purchase both DBS and cable TV services.⁵ Even as satellite attracts previous cable subscribers, the cable industry makes more money by raising prices to all its remaining and new subscribers. For example, since passage of the Act, cable's rate increases yielded almost three times more revenue than cable lost to the growth in DBS subscriptions. See Attachments C and D. Obviously, satellite TV does not discipline cable prices.

In contrast, FCC data show that where cable faces head-to-head competition from another transmission "wire," cable rates are about 10 percent lower than where cable faces only satellite TV challengers.⁶ Just last weekend officials from Montgomery County, Maryland announced an agreement with Starpower Communications, Inc. which proposes to offer service for about \$5 per month (15 percent) less than Cable TV Montgomery currently charges—while offering 21 more channels.⁷ That is real price competition. And a recent Detroit News survey provides further evidence of the need to discipline cable monopolies:

The News' survey found competition does matter. Of roughly 100 Metro Detroit communities with cable, 34 also have a second cable company, Ameritech, which is preparing to wire six more communities.

Overall, The News' survey found the price of the average basic cable package went from \$ 26.31 to \$ 29.03—a 10.3-percent increase.

Prices went up less in areas where Ameritech competes with longtime cable providers such as Comcast, TCI, MediaOne and Time Warner. Ameritech, which first opened for business in Canton Township in spring 1996, serves about 200,000 customers. About two-thirds of Metro Detroit household get cable.

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about good, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from non-commercial contributions, grants and fees. In addition to reports on consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

² Public Law 104-104, 110 Stat. 56 (1996)

³ 47 U.S.C. Sec 543 (c)(4), Public Law 104-104 Section 301

⁴ Dr. Mark Cooper and Gene Kimmelman, "The Digital Divide Confronts the Telecommunications Act of 1996," Consumers Union and Consumer Federation of America, February 1999 at 38

⁵ Id

⁶ In the Matter of Annual Assessment of the Status of Competition in Markets for the delivery of Video Programming, FIFTH ANNUAL REPORT, CS Dkt. No. 98-102, Dec. 23, 1998, at F-4, footnote 18

⁷ Scott Wilson, "Starpower May Take On Cable TV Montgomery", Washington Post, February 20, 1999

In southern Oakland County, for instance, where longtime provider TCI and Ameritech compete, prices are down. Downriver, where Ameritech and TCI also compete, prices have stayed flat for two years.

Of nine Metro Detroit Comcast systems, six did not see price increases for basic cable in November. The six have cable competition. In the three systems that instituted increases—the Grosse Pointes, Pontiac/Waterford Township and Inkster—there's no competition. Each community saw a 5.7 percent boost.⁸

THE NEED FOR POLICY ADJUSTMENTS

The failure of federal policy to ensure reasonable cable rates makes it necessary for policymakers to devote greater attention to promoting increased competition to the cable industry. Legislation that puts cable's potential competitors on the same legal footing as cable companies could open the door to more choice and lower prices for all TV services.

Recent deals that combine EchoStar Communications Corporation's DBS business with DBS facilities owned by News Corporation and MCI/WorldCom, and DIRECTV's combination with United States Satellite Broadcasting and PRIMESTAR, dramatically consolidate the satellite industry. However, these deals also could offer consumers more choice and lower prices if the consolidated satellite companies more aggressively compete against cable.

We believe it is critical to both enable and require these satellite companies to become head-to-head competitors with cable for the core TV services that consumers watch the most. This requires:

- Passage of legislation, which gives satellite and other potential competitors comparable treatment under our nation's communications and copyright laws;
- Expansion of previous laws designed to hold down cable rates and make popular TV channels available to cable's potential competitors;
- Aggressive regulatory oversight of potential competitor's access to cable equipment, cable-owned programming or programming that cable companies exert monopolistic influence over; and
- Strong antitrust/regulatory review of satellite mergers to ensure that satellite companies continue to reduce up-front costs and eliminate other market impediments to direct price competition with the cable industry.

Because of the highly concentrated nature of the cable marketplace, policies designed to foster increased competition throughout the market require giving potential competitors breathing room as they seek to enter the market and expand their businesses. The two largest cable companies, Tele-Communications Inc. (TCI) and Time Warner, own a substantial stake in cable systems serving about one-half of all cable customers, and TCI has an ownership stake in 67 national programming channels while Time Warner has a stake in 30 national channels.⁹ In addition TCI owns about 9 percent of Time Warner. Most importantly, 29 of the 50 most subscribed-to channels, and nine of the top 15 prime-time watched channels are substantially owned by the largest cable companies.¹⁰

Congress must enact legislation which enables consumers who, in good faith, purchased satellite TV services, to continue to receive broadcast network channels. These consumers, who have made an enormous investment in exactly what Congress has been promoting—a potential competitor to cable TV—must not be held hostage to a battle between a highly profitable broadcasting business,¹¹ and satellite companies over slightly greater profits.

In addition, Congress should ensure that satellite and other potential cable competitors have an opportunity to challenge cable's dominance and gain a large enough market presence to offer a mass-market alternative to cable. To achieve this goal, Consumers Union urges you to enact legislation which equalizes copyright payments and the compulsory license for cable, satellite and all other potential competitors. Obstacles to the transmission of local broadcast signals by satellite TV providers, or other potential competitors, should also be eliminated.

Unfortunately, experience under the 1996 Telecom Act and its predecessor, the 1992 Cable Act¹² demonstrates that market entry does not always translate into mass-market competition. The satellite TV industry has been enormously successful by focusing on high-end consumers who are willing (and able) to pay hundreds of

⁸Tim Kiska, "Cable Bills Soar 10% in Two Years," *Detroit News*, February 16, 1999

⁹FIFTH ANNUAL REPORT, op. cit., at Appendixes C and D

¹⁰Id.

¹¹Comments of Dr. Dean Alger, In the Matter of Local Broadcast Ownership, FCC En Banc Hearing, February 12, 1998 at 26.

¹²Public Law 102-385, 106 Stat. 1460 (1992)

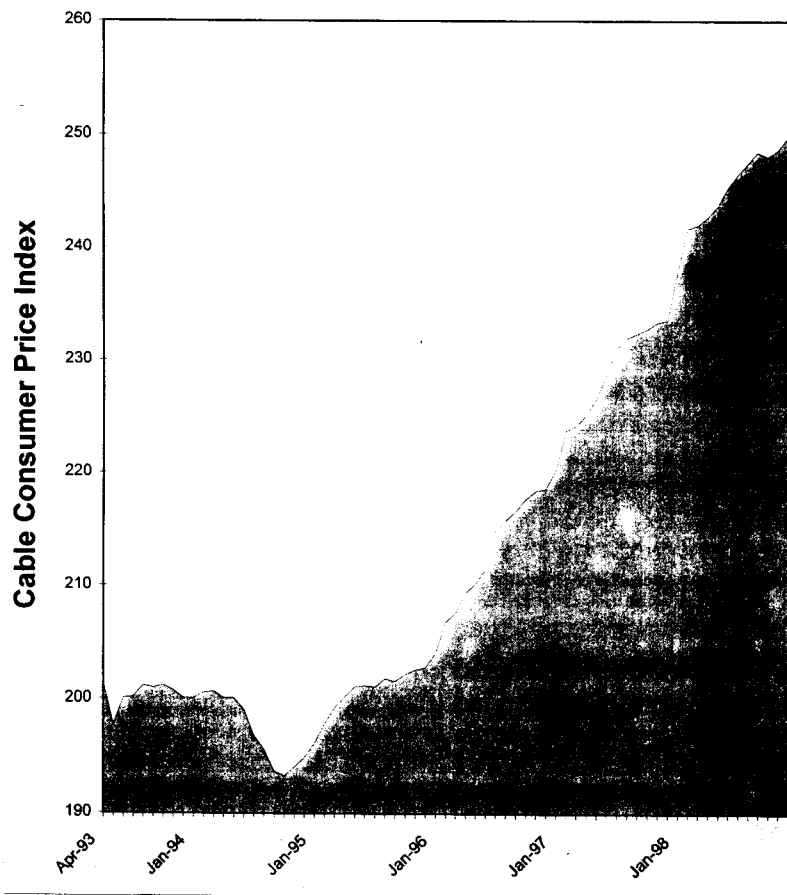
dollars for a dish, want hundreds of channels, desire specialized programming (e.g., sports, movies) and are interested in higher quality (digital) signals. While recent satellite industry efforts to reduce up-front cost to consumers are promising, they are not enough to promote rapid price competition with cable.

Consumers Union therefore believes that, as policymakers open the cable market to more competition from satellite TV providers, the satellite companies must be responsive to the public's demand for competition to the most popular cable offerings. Efforts to promote price competition by reducing up-front costs and adding local broadcast signals to popular cable programming packages must be encouraged, to jump-start mass market rivalry with cable. Only when satellite TV offers the vast majority of cable subscribers an alternative that meets their needs will cable companies be forced to bring down prices.

CONCLUSION

Immediate, forceful public policy measures designed to promote mass-market competition to the cable industry and block cable's monopolistic practices can offer consumers relief from spiraling cable rates. It is time for Congress, antitrust and regulatory bodies to ensure that potential competitors like satellite TV companies have a fair chance to compete on price with the cable television industry. Unless Congress puts a regulatory lid on cable rates, the only way consumers will see an end to spiraling prices is through a single-minded governmental assault on all barriers to competition.

ATTACHMENT A

Cable Rates

December 1983 = 100

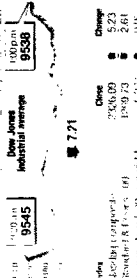
Source: Bureau of Labor Statistics



FRIDAY, JANUARY 8, 1999

MONEYLINE

Thursday markets



Business Travel Today

By David Field

So figure: Hertz added a currency conversion tool to its Web site to let renters calculate costs in dollars, local foreign currency and in the new euro.

Drive, N.Y.: Earn Delta Sky-Miles by buying or leasing new



**destinations
for business
travelers**

Canada	74%
Asia	69%
Mexico, Central America, the Caribbean	65%
South America	49%

Source: A. Buckle, "Business Travelers."

From 450 Automotive Dealers' Marketing members. Call 888.310.3135 for locations.

1.5 million-square-foot shared rental-car facility at San Francisco International.

Sale (1): Horizon Air
has cut fares by as
much as 35% for travel
by June 13 on routes
covering the Pacific
Northwest. Buy tickets
by Jan. 13.

Buy New Zealand bus tickets for travel April 13. Buy tickets by Jan 31, off; buy Feb. 1-28, get

FCC chief admits cable oversight 'too liberal'

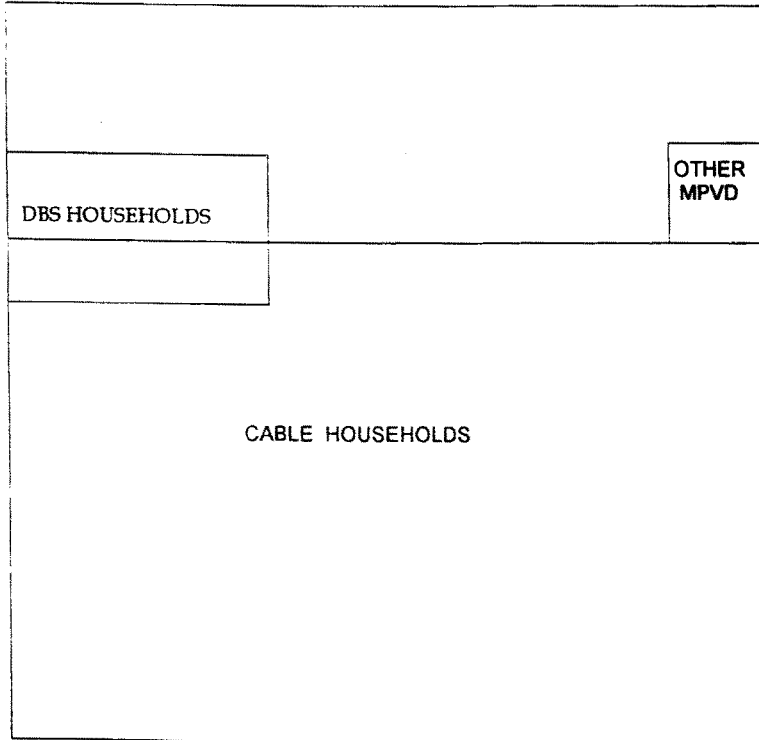
[illegible]

Although competition is intensifying, the level of competition is still low. "Although consumers are seeking a very exciting transaction,"

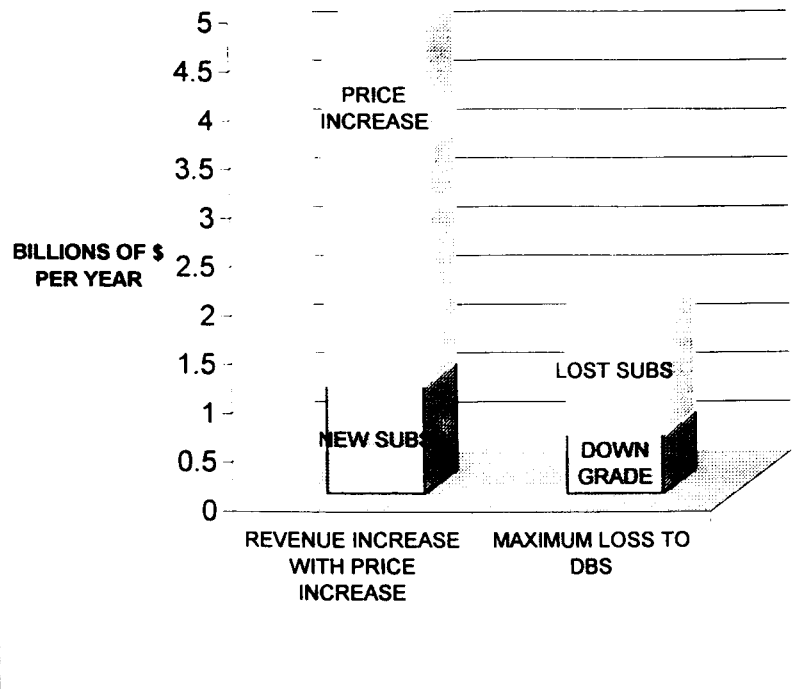
Hundt, who resigned in 1917, particularly wants Congress to change the rules that prevent satellite broadcasters from af-

ATTACHMENT C**MARKET SHARE AND MARKET OVERLAP
IN THE MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION MARKET**

TELEVISION HOUSEHOLDS



ATTACHMENT D

**CABLE MAKES MORE BY RAISING PRICES THAN COMPETING
IN THE DBS HIGH-END NICHE MARKET**

SOURCE: FCC, Fifth Annual Report, Appendix C for subscribers. Assume \$5 increase since 1/1/96.

Mr. TAUZIN. Thank you very much, Mr. Kimmelman.

Now we are pleased to recognize Mr. Andy Fisher, the Executive Vice President, TV Affiliates, of Cox Broadcasting. Mr. Fisher.

STATEMENT OF ANDREW S. FISHER

Mr. FISHER. Mr. Chairman, thank you. It was very reassuring to hear the remarks of the committee members. This is obviously a group that has looked at these issues carefully, and the amount of knowledge here is very impressive. The issues are well-defined.

Why are we here today? Essentially, we are here today because two Federal courts and the FCC have finally said that it is time to enforce a fundamental copyright law that the satellite companies, in the words of the judge, "willfully and repeatedly violated" for 10 years.

The second reason we are here is that enforcement is about to begin. It begins this weekend.

Last, it is because of all of the people who are victims of this lawbreaking—they are your constituents, and they are our viewers—are really mad, and they have every right to be mad. They didn't deserve to be put in this spot. You are hearing from them, and we are hearing from them, and it is simply not fair.

So the question is, what are we going to do about it? Before I get into some solutions, I would like to clear up some myths that periodically get circulated about this issue.

One myth is that consumers are going to lose their network service. That is simply not true. As two courts and the FCC's Cable Bureau have determined, 90 percent of the people who are illegal subscribers, who were convinced that they could do it when they shouldn't have been told they could, can receive these signals over the air. Every time this situation is looked at, the same results occur. The overwhelming percentage of these subscribers can see these television signals, and they can see them with a conventional rooftop antenna.

I am 51 years old. Some of those items you had on your desk, Mr. Chairman, were interesting. I haven't seen them before. I have lived in Brooklyn. I have lived in the flatlands of Oklahoma. I have lived in a number of markets around the country. I just have only dealt with rooftop antennas. So I am not sure I know what those items were. But they truly work, and they work better than ever before.

The second myth is that a Grade B picture is a bad picture, and that just isn't true. I would like to roll a tape that was made as part of the process of the court battle for a Raleigh television station. Now the first picture you are going to see is not a very good television picture. It is a non-Grade B picture. If you see this at home, you deserve to have direct service from an out-of-market distributor. But the next signal you are going to see is 70 miles from the transmitter of WTVB, 70 miles.

The predictions were that this would be a Grade B signal. They went out there and measured it, and it was a Grade B signal. Ladies and gentlemen, I would suggest to you that is a terrific signal. It is better than most cable companies deliver. That is the Grade B standard predicted; that is the Grade B standard as measured.

It is a good signal. These comments that sometimes Grade B isn't good—a Grade B signal over 90 percent of the time tends to work.

Now let's talk about solutions. The FCC did a pretty good job, and they are not an agency that we are always real comfortable with because they are tough on us. But they went back and they looked again, at Congress' urging, at the current Longley-Rice model. They tweaked it. They in some cases shrank our market areas a little. They have improved the terrain mapping. They have said we now have got to be able to have computer equations that can basically predict less than the distance of a football field mark after mark after mark. They are taking interference; they are taking vegetation.

Our industry has accepted it flatly and completely. We have filed with the Miami court and said we are comfortable with you immediately amending the decision in court to accept every aspect of the FCC's recommendations. That is what the broadcast industry is right now using as their measurement standard.

We support the proposal for loser pays. If the equations say that service, in fact, can be achieved, and the tape station turns that down, and it is measured, we should pay the price if it turns out that service should have been granted. We are comfortable with loser pays. We are doing everything we know how. We are granting waivers. There are hundreds of thousands of waivers for individual stations and individual consumers that have been granted across this country, and you are going to hear about that process.

What about the satellite companies? Is it fair that they get a free ride? We suggest that they have made half a billion dollars—half a billion dollars—illegally selling this service. Those are the numbers from that industry. We think that some of that money ought to go to a fund to buy antennas for the people who were ripped off. The folks who were told they were legal and they weren't should be able to have access to the money that the satellite services have illegally been achieving for all these years.

We think the ultimate solution is before this committee. It is local-to-local. It should include must-carry at a date certain. We think once local signals are available, let's get them in the house and get distant signals off. We are working hard to solve a problem that is not of our own making.

We don't think that having continued illegal activity and revenue flow is right. Put the onus where it belongs, on the people who created the problem, and pass local-to-local with the same rules as cable.

Thank you, Mr. Chairman.

[The prepared statement of Andrew S. Fisher follows:]

PREPARED STATEMENT OF ANDREW S. FISHER, EXECUTIVE VICE PRESIDENT,
TELEVISION AFFILIATES, COX BROADCASTING

Mr. Chairman and distinguished members of this subcommittee, thank you for the opportunity to speak to you today. I am here as a member of the television board of the National Association of Broadcasters and on behalf of local network affiliates.

This Sunday, Feb. 28, the Satellite Home Viewer Act is finally scheduled to be enforced. This is the culmination of literally a decade-long struggle in which broadcasters have tried to get satellite companies to adhere to the law.

This legal battle has included two lawsuits filed by broadcasters in federal courts in North Carolina and Florida, resulting in decisive rulings that the satellite industry had willfully violated the Satellite Home Viewer Act.

U.S. District Judge Lenore Nesbitt, who presided over the Florida lawsuit, observed the following:

“PrimeTime 24 willfully and repeatedly broadcast copyrighted network programming to served households in violation of the SHVA.”

She further noted:

“Plaintiff’s signal intensity testing at randomly selected homes in a variety of markets provides overwhelming evidence that the great majority of PrimeTime subscribers are ineligible to receive its network service.”

Subsequent to these court rulings, the FCC earlier this month, released its own decision on the SHVA matter. After a carefully considered rule-making proceeding, the FCC declined to change the definition of Grade B intensity and endorsed the continued use of Longley-Rice mapping technology with some modifications. In addition, the FCC acknowledged that the “overwhelming majority” of PrimeTime 24 subscribers are receiving distant network signals illegally and stated that it could not assist any household receiving such illegal signals. While we have occasionally disagreed with the Commission, we believe they did an admirable job.

The net result of all of this is that several hundred thousand satellite home dish owners will lose satellite delivery of CBS and FOX feeds on Sunday. But they are not losing access to CBS and FOX programming. They will simply be required to change their means of receiving it. That is because it is available to them, right now, via the local affiliates of the CBS and FOX networks for free.

Mr. Chairman, broadcasters do not relish the fact that this is happening to these consumers, who are our viewers. We also appreciate the sympathy that you, the members of this subcommittee, have for these consumers, who are your constituents. And no one has a more vested interest in making sure the greatest number of people can see our programming than does the broadcast industry.

But the question before you today is how can we assure this? For our part, broadcasters are granting literally thousands of waivers for anyone scheduled to have their service terminated who cannot receive a quality Grade B signal. But the burden also should fall on the people who broke the law—PrimeTime 24 and the satellite industry.

In most cases, for satellite subscribers covered by the termination order, the only thing preventing clear reception of network programming from local affiliates is the lack of a properly installed antenna. Certainly the satellite industry knows this. Two large telephone companies, under co-marketing deals with DirecTV, are right now offering turnkey satellite services, including powerful new antennae capable of tapping local TV channels with the mere zap of a remote control. Let me also quote from DirecTV’s Web site: “Consumers are realizing that the combination of a DSS system and an off-air antenna is unbeatable.”

If such a solution is good enough for the satellite companies’ new customers, why isn’t it good enough for the customers facing termination? We think the satellite industry ought to use some of the estimated \$557 million in revenue from selling illegal service to buy and install antennae for those customers who are being terminated.

As Judge Nesbitt observed:

“PrimeTime and its distributors have made large profits by ignoring the legal standard that governs their businesses, and have spent minimal amounts on compliance.”

It seems only fair that the satellite industry should take some of these illegal proceeds to reconnect your constituents with their local CBS and FOX affiliates.

What role should Congress play?

As many of you know, advances in technology will soon help solve the problems underlying this entire controversy. Satellite operators will be able to deliver local stations to customers in their own local markets just like cable operators already do. In addition to satellite delivered local-to-local service, other terrestrial options are emerging, such as Northpoint.

To create a level playing field for satellite operators, Congress should add local-to-local language into the Satellite Home Viewer Act this year. These provisions—which both broadcasters and satellite carriers support—would give satellite systems essentially the same rights and responsibilities for the carriage of local broadcast stations as cable systems now enjoy. Bills introduced in both the House and the Senate Judiciary committees accomplish this goal.

In our view, must-carry should be attached to local-to-local, along with SYNDEX and network non-duplication protections similar to those found in a cable environment.

There should be statutory language that affirms the recent FCC order on the distant network service provisions of SHVA, the highlights of which are:

- Continued use of an improved Longley-Rice predictive model,
- Elimination of the 90-day waiting period for former cable subscribers and,
- Enactment of a "loser-pays" provision for signal-strength testing.

Finally, Congress should mandate that when local signals are provided in a given market that the provision of distant signals will no longer be legal.

What should Congress not do?

We urge Congress to resist the urge to negate the judge's decision by grandfathering illegal subscribers. Why?

For the same reason that people who buy counterfeit satellite access cards should not be permitted to continue to use those cards. In Washington State, a federal grand jury last week indicted four people for selling counterfeit satellite access cards. DirectTV, whose signals were being stolen, rightfully praised the government's enforcement of their franchise rights.

We only hope that they will extend the same courtesy to us as we try to protect our franchise rights.

Grandfathering also has serious implications for our local broadcast system. It is local broadcast stations, not national satellite networks, which communicate with local communities. It is local stations that issue emergency weather reports and local news bulletins. It is local stations that host candidate debates and provide other critical information about campaigns for public office.

There is a far larger universe of consumers—the millions of Americans who do not own satellite dishes, and rely on free, over-the-air television—who will be the losers if you make an exception for these few illegal subscribers.

Grandfathering also creates an expectation that it is acceptable to violate copyright law. And it overlooks the issue of whether or not a signal is available. As I said earlier, if it is available, the solution is an antenna. If it's not, then the consumer is eligible NOW to receive distant network service.

And grandfathering continues to allow the satellite companies to enrich themselves to the tune of millions a month from illegal distant network service.

Mr. Chairman, in closing let me reiterate a number of key points:

We hope you will allow the law to be enforced; avoid grandfathering; enact local-to-local with appropriate marketplace protections; and assist your constituents in reconnecting to their local stations by requiring satellite companies use their ill-gotten gains to buy antennae for these affected satellite customers.

As the debate moves forward, we pledge to work with you and the members of this subcommittee, toward these meaningful solutions.

Mr. TAUZIN. Thank you, Mr. Fisher.

We are now pleased to welcome Mr. Jack Perry, President and CEO of Decisionmark, Cedar Rapids, Iowa.

STATEMENT OF JACK PERRY

Mr. PERRY. Thank you, Mr. Chairman, distinguished members of the committee.

I am here today on behalf of 38 pioneers at Decisionmark who have dedicated time, energy, and considerable resources to solving many of the problems related to the Satellite Home Viewer Act. What I have discovered in the last 2 years is the crucial need for a conduit between satellite providers and broadcasters and consumers.

First, we are a technology and data company. Most germane to today's discussion is how our technology and data answers the question of consumer eligibility.

Second, and I think most importantly, we are a company that has developed the technology that will let the consumer prevail. If the consumer prevails, so do the broadcasters and so do the satellite providers.

One year ago I came to Washington to introduce to the world our Geneva technology. For the first time ever, technology existed to solve the question of eligibility at the point of sale. Primetime 24 and all but one of their distributors are today deploying our Geneva technology. Geneva is accurate, cost-effective, and flexible enough to be installed at any DBS company in one business day.

While, admittedly, we are initially focused on answering the question of eligibility, sometimes appearing to be to the benefit of the broadcasters, we are today focused on consumer-centric solutions. These solutions, used proactively by all parties, can only promote needed competition with cable.

By starting from the basis of eligibility, we have developed the following solutions: GETAWAIVER.COM. This Internet site went live several weeks ago and has already facilitated over 67,000 waiver requests. In fact, yesterday it did 10,933 requests for waivers. The most important feature of our GETAWAIVER.COM website is it requires waivers from the appropriate broadcaster on behalf of the consumer.

Our WAIVERTV.COM website allows broadcasters to process waiver requests in a timely, pro-consumer fashion. Today it is used by more than 82 percent of the broadcasters to proactively address waivers. Without a tool like WAIVERTV, the 65,000 waiver requests to date might have cost the broadcasters over a million dollars in time to assess them at 20 minutes per waiver.

The same technology that is used to determine eligibility and process waivers today forms the basis of our antenna selector technology. By doing the equivalent of looking up in the sky at each household and saying, what stations are received at this household, we can tell that household the optimal off-air antenna they would need. From where I sit, this is the best way to promote free over-the-air television.

Today the committee is faced with the challenge of crafting legislation that will impact more than 90 million households. Technology is available to give consumers choices. Our technology, put to use by the broadcasters and the satellite companies, can only help the consumer prevail.

Thank you, and I will be happy to answer any questions.

[The prepared statement of Jack Perry follows:]

PREPARED STATEMENT OF JACK PERRY, PRESIDENT AND CEO, DECISIONMARK CORP.

Good afternoon and thank you for inviting Decisionmark to testify in today's hearing. Decisionmark is an Iowa-based computer software company. Our company has expertise in mapping and data mining and has created various software tools to assist the broadcast and satellite industries, as well as consumers, with the vexed issues surrounding the Satellite Home Viewer Act ("SHVA" or "Act"). Decisionmark's homepage on the World Wide Web is located at www.decisionmark.com.

Decisionmark has developed computer software and data to facilitate the use of a Individual Location Longley-Rice methodology as a predictive aid in determining which households are likely to receive an over-the-air signal of Grade-B intensity. In addition, Decisionmark has developed an algorithm for recommending an appropriate off-air antenna for any household in the United States. Decisionmark's services are available to assist the broadcast and satellite industries and the public in implementing the Act in quick, simple, and cost-efficient ways. Furthermore, Decisionmark can go beyond simple enforcement of the Act to provide a complete solution that ensures consumers' enjoyment of the network programming that is so important to them. Decisionmark's solution is market-based, and above all, neutral. The tripartite Decisionmark solution consists of accurate point-of-sale eligibility

screening, appropriate selection of off-air antennas and efficient processing of SHVA waivers.

I. DECISIONMARK HISTORY AND BACKGROUND

In August 1996, a local ABC affiliate contacted Decisionmark. It was having problems evaluating the eligibility of satellite subscribers within its local viewing area who were receiving distant network service. The affiliate was using paper maps to identify, manually, the location of satellite subscribers in the station's service area. After a subscriber was located, the affiliate would then determine whether the subscriber was likely to receive a signal of Grade B intensity from the affiliate. Not surprisingly, this process was slow, cumbersome, and expensive. My company, at that time, had already developed a desktop mapping program, Proximity®, that it then customized to identify and locate subscribers for the affiliate more easily and accurately. The affiliate was pleased with the results, and, consequently, Decisionmark began to market this new software, Proximity®TV, to other affiliates. Soon, three of the four broadcast networks, ABC, CBS, and Fox, came to rely upon ProximityTV as a method of identifying households that are predicted to receive Grade B service from a local affiliate. ProximityTV remains widely used today by major network affiliates, including several NBC affiliates, for SHVA compliance monitoring. Using a proprietary procedure, Decisionmark's software displays each subscriber's resident address as a specific point on a map. Once the location of a subscriber's satellite dish is known in relation to an affiliate's predicted Grade B signal, the affiliate can decide whether to challenge the subscriber's eligibility.

Decisionmark was subsequently selected by the broadcast and satellite industries to perform the data processing for the "Red Light/Green Light" settlement between the National Association of Broadcasters ("NAB"), Primestar, and Netlink. The "Red Light/Green Light" agreement relies on "presumptions" of eligibility within a local station's Designated Market Area ("DMA") DMA-plus counties, based on the Longley-Rice model. The presumptions may be rebutted with an actual signal measurement test. Under the agreement, the predicted signal strength across each ZIP Code is analyzed. A "Red Light" status is assigned to those ZIP Codes within a local station's DMA that are predicted to receive a signal of at least Grade B intensity. Households located within these ZIP Codes are presumed to be "served" by one or more local stations affiliated with that network and will not be sold distant network service unless the presumption of ineligibility is rebutted and overcome by an actual signal strength measurement test. A "Green Light" status is assigned to those ZIP Codes within a local station's DMA that are predicted to be unable to receive a signal of at least Grade B intensity. Households located within these ZIP Codes are presumed eligible to receive a distant network signal unless, again, the presumption of eligibility is overcome by an actual test. Decisionmark provided technical support for negotiations between the representatives of the NAB and the two satellite providers.

Under the broadcast industry/Primestar-Netlink agreement, the parties agreed that the relevant geographic area for each station is its DMA, as noted above. Obviously, predicted Grade B signal intensities are not aligned with ZIP Code boundaries. The "Red Light" or "Green Light" classification of a ZIP Code area is resolved on a population percentage basis, i.e., if 50+% of the population in a given ZIP Code is predicted to be able to receive a signal of at least Grade B intensity, then the entire ZIP Code is given "Red Light" status. Consequently, within certain areas, some consumers may be presumptively classified as "served" when they cannot receive an actual signal of Grade B intensity from their local affiliate(s). These consumers can request waivers from their local network affiliate(s). Conversely, some viewers are presumptively classified as eligible to receive distant network service when, in fact, they receive a signal of Grade B intensity from their local affiliate(s); in these cases, the affiliate(s) can rebut the presumption with an actual measurement. The "Red Light/Green Light" agreement, as implemented through Decisionmark's technology, provides both broadcast stations and participating satellite providers a quick determination of presumptive eligibility for each household requesting distant network service. Although the Red Light/Green Light agreement provides a workable compromise, it is imperfect. Its limitations are what drove Decisionmark to develop other technological solutions, most notably WaiverTV and getawaiver.com, both of which are discussed below.

II. DECISIONMARK TECHNOLOGY

The Geneva Technology

In the course of the development of the software used in the broadcast industry/Primestar-Netlink agreement, it became clear to me that a “household-based” point-of-sale solution was needed. It was then that I set Decisionmark on a course to create what we now refer to as the “Geneva” technology, which is based on the Longley-Rice model.¹ Essentially, the Geneva technology combines household-level geocoding, Decisionmark’s proprietary television transmitter database (Coronado), Federal Communications Commission (“FCC”) terrain data and point-to-point Longley-Rice calculations to produce extremely accurate predictions of signal strength.

Using Geneva, the address of a particular household may be entered and a list of all stations that are predicted to provide the household with Grade B service or better can be instantly displayed. Geneva yields “address specific” data while the “ZIP Code” methodology yields data aggregated over the area of an entire given ZIP Code. There are inaccuracies inherent with any aggregated grid systems that make such systems unfair to consumers. Consumers living within an area aggregated as ineligible may in fact be unable to receive a Grade B signal. The Geneva system, therefore, is more precise and more accurate for each household. The speed, accuracy, and ease of use of this system are unmatched, and the technology can be easily integrated into existing business systems for high volume usage.² In addition, although Geneva, as currently implemented, provides results for predicted Grade B service, it is readily adaptable to any service standards adopted by Congress, the FCC, or negotiated industry agreements.

The Coronado Data Warehouse

An important component of the Decisionmark technology is Decisionmark’s comprehensive data warehouse, Coronado. Coronado contains broadcasting-related data on television viewers, satellite consumers and broadcasters. The cornerstone of Coronado is Decisionmark’s proprietary television engineering database. This database is widely viewed in the industry as a standard for signal area data, and Decisionmark is committed to maintaining its accuracy. Coronado began with the FCC’s public domain information as its baseline, but it has been updated extensively. In fact, Decisionmark has invested close to one million dollars in the development of Coronado.

Coronado includes affiliate-based information about which stations have satellite stations and translators, how many they have, and the call letters for each. The public domain FCC databases provide no correlation between main stations, satellite stations, and translators. Not only does Decisionmark maintain the link between the main stations and their satellites and translators, but it also makes corrections to any detailed information in the database, such as tower height, effective radiated power (“ERP”), and latitude and longitude. This is possible because Decisionmark is in continuing contact with broadcast affiliates. Decisionmark’s team of experts has spent more than 15,000 hours in maintaining contact with affiliates and updating the database. The result is a highly accurate, widely relied upon signal area database.

Decisionmark’s Proprietary Individual Location Longley-Rice (ILLR) Software

Decisionmark has implemented a proprietary version of the ILLR that has been highly optimized for performance on readily available platforms. It uses the ILLR method as outlined in the FCC’s Report and Order of February 2, 1999. The technology incorporates interfaces that allow our software to be integrated into main-frame-based call center software, client-server systems and browser-based systems. Because the rules and regulations of signal strength prediction pursuant to the SHVA have been fluid, we have designed the software tool to be both flexible yet highly efficient. In fact, we are confident that if any new methodology were mandated or agreed upon, we could have our clients in compliance within days.

Antenna Selector Technology

Decisionmark has developed antenna selector technology to predict the performance of an individual antenna at an individual location when receiving broadcast television signals. This technology utilizes the same ILLR signal strength prediction methodology described above. It also accounts for factors such as the number of televisions fed by the antenna, line loss, the signal gain associated with a given an-

¹The name Geneva was chosen because it universally connotes neutrality. Decisionmark has filed for a patent on the Geneva technology.

²See <www.decisionmark.com/bcentral/geneva.html>.

tenna, the orientation of the antenna relative to the position of the transmitting tower and so on. These factors are then used to predict, with a high degree of accuracy, the quality of a television picture at a specific household using a specific antenna. Decisionmark's antenna selector technology can be incorporated into e-commerce sites to provide antenna recommendations for purchase online either on a standalone website or as part of a DBS provider's site.

III. DECISIONMARK SOLUTIONS

Decisionmark's technology has made it possible for us to develop solutions that go beyond simple enforcement of the Act to provide genuine resolution for the problems of consumers who want to view network programming. At the same time, these solutions help promote competition in the multi-channel video programming distribution market. Decisionmark's solutions are market-based, and above all, neutral. Decisionmark's solutions deal with accurate point-of-sale eligibility screening, appropriate selection of off-air antennas and efficient processing of SHVA waivers. Perhaps most importantly, our solutions can be combined to provide a complete system that will guarantee compliance with the law but will also serve consumer's interests.

Eligibility Solutions

Decisionmark's Geneva technology has been implemented to provide eligibility screening in a number of different ways. Our implementation of ILLR is optimized for SHVA eligibility determinations at individual households. To the best of our knowledge, no other company offers or has developed an interactive method for SHVA compliance that uses household-level geocoding and point-to-point Longley-Rice predictions of signal strength and potential interference, both of which were called for in the recent FCC Report and Order. Decisionmark has also developed versions of the ILLR optimized for bulk processing of subscriber lists and for signal area mapping and demographic calculations.

For example, the satellite carrier Primetime24 has implemented the Geneva subscriber-base analysis and point-of-authorization eligibility screening for all but one of its distributors. The subscriber-base analysis determines which current subscribers are predicted to be eligible to receive a distant network package under the SHVA. The analysis is superior to any other system now in use.

Primetime24's distributors now have the ability to enter a potential subscriber's address and, within seconds, determine if that address is likely to receive from a local affiliate a signal of at least Grade B intensity. Some distributors have implemented the technology into their call center software. The satellite provider can then make a decision whether to conduct a site measurement. The Geneva technology permits Primetime24 to comply, in a quick, cost-efficient way, with the terms of the court injunction issued in *CBS, Inc. v. Primetime24 Joint Venture*, No. 96-3650-CIV-NESBITT (S.D. Fla. July 10, 1998). That injunction prohibits Primetime24 from supplying CBS or Fox distant network programming to any consumer within an area shown on Longley-Rice propagation maps as receiving a signal of at least Grade B intensity of a CBS or Fox primary network station, unless written consent is obtained or an actual test is conducted at a consumer's home showing the household is "unserved" within the meaning of the SHVA.

Another eligibility screening solution provided by Decisionmark is our Internet-based product www.getnetworktv.comTM. Getnetworktv.com is a subscription website for satellite retailers. It is a point-of-sale tool to determine a customer's eligibility for a distant network package. If a customer is deemed ineligible, he or she can request the necessary waivers from the appropriate local affiliates at the point of sale. In addition, if it seems unlikely that the customer would receive waivers, the retailer can direct him or her to one of Decisionmark's antenna selector technology solutions. To view screen shots of www.getnetworktv.com, see our attached supplemental materials.

Antenna Solutions Using Decisionmark's Antenna Selector Technology

www.iwantmyfreetv.comTM—Our antenna selector technology is currently being implemented in two web-based products. In partnership with the Winegard Company, a leading manufacturer of television receiving antennas, Decisionmark is launching [iwantmyfreetv.com](http://www.iwantmyfreetv.com). This website recommends an antenna that is optimized for the consumer's choice of over-the-air broadcast television stations and allows him or her to purchase the antenna online. To the best of our knowledge, no other company has deployed an equivalent consumer-oriented system.

www.AntennaSelector.comTM—In addition, in February 1999, Decisionmark will introduce www.antennaselector.com, an online educational antenna resource. This site will be available to both consumers and retailers. The consumer portion will be informational and list which stations' signals can be received at a particular con-

sumer's household location and display a list of local antenna retailers. The retailers' portion of the site will assist them in making the appropriate antenna recommendation at the point of sale. To view screen shots of www.antennaselector.com, see the attached supplemental materials. All of these tools are designed specifically to assist the consumer in receiving broadcast network television service.

Waiver Solutions

WaiverTV™—Last fall, Decisionmark incorporated the Geneva technology into its waiver products, WaiverTV and getawaiver.com™. WaiverTV is a waiver-processing tool designed for network broadcast affiliates. It is an Internet-based application, free to all broadcasters, that streamlines review by network affiliates of consumer requests for a waiver to receive satellite delivery of a distant network station. WaiverTV was launched in October 1998, and this tool is now being used by over 80% of the network affiliates. Decisionmark's WaiverTV website is located at www.waivertv.com. For screen shots of what WaiverTV looks like on the Web, see our attached supplemental materials.

The court's injunction in the Miami case underscores the need for WaiverTV. Network affiliates have needed and will continue to need assistance in the coming months in dealing with subscribers whose distant network satellite service must be terminated by February 28, 1999. Some of these subscribers may not be able to receive a signal of Grade B intensity from a local affiliate. This technology enables local affiliates to identify and locate each subscriber and will assist affiliates in determining whether an actual signal measurement is warranted. An important feature of WaiverTV is its ability to electronically queue waiver requests submitted from individual subscribers online, which simplifies the waiver request review process and helps assure that viewer communications with a station do not go unanswered.

Getawaiver.com for Consumers—[Getawaiver.com](http://getawaiver.com) is an Internet-based service offered free to consumers. The service streamlines and simplifies the waiver requesting process for consumers. In the past, when subscribers were told by their satellite carriers that they needed a waiver from one or more local network-affiliated stations, subscribers frequently had to make numerous telephone calls to determine which stations should be contacted. For example, some households in Lake Geneva, Wisconsin, would have to request 15 waivers—three from different ABC affiliates, four from different CBS affiliates, four from different Fox affiliates, and four from different NBC affiliates. With getawaiver.com, a consumer needs only to access the getawaiver.com website and enter his or her address. After an address has been entered, getawaiver.com then determines from which network affiliate(s) a waiver is required, the consumer enters comments, and it automatically sends the requests to the appropriate affiliate(s). We have included 100 random consumer comments in our supplemental materials. For screen shots of what getawaiver.com looks like on the Web, see our attached supplemental materials.

Where an affiliate does not participate in WaiverTV, getawaiver.com provides that station's address and phone number so that the consumer can contact the affiliate directly. Although not automated in such circumstances, getawaiver.com is still a time saver for consumers. It provides the consumer information instantly on which non-WaiverTV participating stations need to be contacted and how to do so.

[Getawaiver.com](http://getawaiver.com) and WaiverTV work together and complement each other. A consumer's getawaiver.com's waiver requests are automatically fed into the electronic queue with the affiliates' customized WaiverTV implementation. The entire process is, therefore, automated. In addition to this double streamlining for broadcasters and consumers, satellite operators also benefit, for now they have a place to which they can direct customers who think they may qualify for a waiver.

[Getnetworktv.com](http://getnetworktv.com) is also integrated into Decisionmark's waiver-streamlining process. As mentioned above, getnetworktv.com is an Internet-based tool for satellite retailers. The waiver requests that are generated on behalf of consumers through getnetworktv.com are queued in WaiverTV.

IV. CONCLUSION

Decisionmark is a neutral provider of market-based solutions. Because Decisionmark has been working with all interested parties for the past two years, we are in a unique position. As a neutral technology solution provider, we stand ready today to serve the interests of both the satellite and broadcast industries. More importantly, we can protect and serve the interests of consumers while promoting competition in the multi-channel video programming distribution market.

No other company in the industry can deliver the technology and data as accurately and timely as Decisionmark. What I have discovered is a crucial need for a

conduit through which satellite providers, broadcasters, and consumers could go in dealing with SHVA compliance issues and the overwhelming consumer interest in network programming. I believe that, above all, such a neutral conduit—utilizing one agreed-upon or mandated methodology and one agreed-upon or mandated database—is needed so the consumer doesn’t suffer needlessly.

In addition to being in a position to provide assistance and solutions for all sides of the SHVA issues, Decisionmark has demonstrated the capacity to implement any “predictive” signal strength standard that may be proposed by the FCC, Congress, or the affected industries.

Mr. TAUZIN. Thank you, Mr. Perry.

Now we are pleased to welcome Ms. Sophia—you helped me with this before—“Sophia,” right?

STATEMENT OF SOPHIA COLLIER

Ms. COLLIER. “Sophia.”

Mr. TAUZIN. Sophia Collier, President and CEO of Northpoint Technology. Sophia.

Ms. COLLIER. Mr. Chairman, Mr. Markey, and other members of the subcommittee, it is a pleasure to appear before you today. My name is Sophia Collier, and I am the President and CEO of Northpoint Technology. I am here today to tell you about an exciting new technology that can provide a complete solution to this vexing local-into-local problem and launch us as a formidable new competitor to cable.

Northpoint Technology is a tested and proven broadband digital system which reuses the very same spectrum used by DBS satellites. We have a large capacity, and therefore, can provide all local stations to all 211 television markets. We will comply with full must-carry and retransmission consent in the very same manner as the cable companies do. Our low-cost service can be provided wholesale to direct broadcasters, as well as directly to consumers, as a standalone service.

But in order to launch our service, we need the go-ahead from the FCC. We already have 68 local affiliates in Broadwave USA, whose applications are pending before the FCC. Together, we will serve all television markets with our high-capacity system. We can begin service in some markets in just 6 months, and then have all 211 markets covered within 2 years. We, therefore, will enter markets that have no near-term prospect of cable competition.

Let me briefly describe how our technology works. Northpoint brings satellite frequency sharing principles down to Earth. Right now DBS satellites are spaced 9 degrees apart from one another. This amount of separation allows them to reuse the very same frequencies that one another use. This spectrum can be reused again for terrestrial transmissions.

DBS satellites orbit around the equator, and therefore, all DBS antennas in the United States are pointed to the south. We reuse this very same spectrum by transmitting from the north; hence, our name, Northpoint Technology.

Our system will be deployed in local markets as a series of low-cost cascading cells. This little device here is actually our transmit antenna. This weighs just three pounds. So you compare this to a big, over-the-air television antenna. This little antenna can cover 100 square miles of area. It can be easily located on existing towers and buildings. It can be tucked here and there in a very site-spe-

cific manner that will cover those parts of the community that are flat, but also those parts that are in a valley or on a hill or in a mountainous region. In fact, our customers will have at least three places to point to receive our service, maximizing the reception strength.

We have operated successfully under two experimental licenses issued by the FCC since 1977. We have made detailed technical reports about the success of our work. This is our latest report from our latest test.

In December we are operated our system in downtown Austin, where there are several thousand DBS customers. We established a hotline to Direct TV's national call center to see if there were any disruptions from our operations. We ran our system day and night. We ran it rain and shine. We ran it in every type of weather condition, and there was not one call on that hotline from harmful interference to a direct broadcaster.

Our system works, and I would like to tell you about our plans. We seek to compete head-to-head with cable. We can provide a high-quality digital service to customers at under \$20 a month, approximately half the price of basic cable. Our reception equipment is also low cost because we use the same consumer equipment as DBS providers, where it is on the experience curve and available in consumer electronic stores.

We can solve the local signal problem in two ways. We can offer our customers local signals and other programmings directly through our affiliates or our affiliates can make our local signals available to DBS providers on a wholesale basis. In either case, Northpoint Technology provides a solution to the local signal problem, combining local television signals and satellite signals with the single click of a remote control. Northpoint has an Internet option and will be able to have a high-capacity broadband service.

The Commission is now seeking comments on our proposals and has the information needed to move forward. We ask your support in urging them to take a serious look and expeditious look at our system. Thank you very much.

[The prepared statement of Sophia Collier follows:]

PREPARED STATEMENT OF SOPHIA COLLIER, PRESIDENT AND CEO, NORTHPOINT TECHNOLOGY, INC.

Chairman Tauzin, Ranking Member Markey, and other members of the Telecommunications Subcommittee: Thank you for providing me the opportunity to testify.

While a lot of our discussion today will focus on regulatory aspects of the Satellite Home Viewer Act and its impact on cable competition, I am here to present a technology-based solution to both the local signal problem and the need to provide real competition to cable.

Northpoint Technology is an advanced, broadband, digital wireless system that has the capacity to offer all local television signals, analog and digital, with a full must carry obligation. The Northpoint service would operate in the 12 GHz band, reusing spectrum used by DBS operators. Our service can be provided on a wholesale basis to DBS carriers, and it can be offered directly to customers as a stand-alone service. In addition to carrying local stations, we will offer other multi-channel video programming and Internet service.

We already have a network of 68 locally-based affiliates, operating under the name BroadwaveUSA, with license applications, currently pending before the FCC, for all 211 local television markets. In order to deploy our service, the FCC must also act upon a rulemaking (ET Docket No. 98-206). Once regulatory approval is

achieved, our service can be deployed in the first markets in as little as six months, with nationwide coverage within two years.

Northpoint and our affiliates stand ready to solve the local to local signal problem once and for all, with full must carry and retransmission consent obligations. We are also eager to launch ourselves as an effective new competitor to cable. Let me emphasize that Northpoint and its affiliates are prepared to enter markets that have no near term prospects of a real competitor to cable.

An Exciting New Technology

The strength of Northpoint's technology is that it is very low cost. By reusing existing spectrum, we can make use of existing off-the-shelf equipment that is already tested, proven and available at low cost.

Let me tell you how it works:

Northpoint takes proven and efficient satellite frequency-sharing principles and applies them to terrestrial earth-based broadcasting. For many years satellite carriers have been able to share frequencies with one another by spacing their satellites a sufficient distance apart. This "sharing geometry" is well known and understood, and it is the basis of all FCC satellite allocations. For example, DBS satellites are designed to share spectrum with one another when they are at least 9-degrees apart. Satellites in other bands are able to share when they are as little as 2-degrees apart. The reason this works is that satellites broadcast directionally from space to earth into reception dishes that are designed to see only a small part of the sky. Once these dishes are pointed at their chosen satellite, they cannot see the other satellites that are transmitting on the exact same frequencies.

Northpoint's technology extends this frequency-sharing principle to terrestrial transmissions. By staying at least 9-degrees away from the beam of any DBS satellite, we will share the 12.2-12.7 GHz band with the DBS satellites, just as they share with one another.

All DBS satellites orbit around the equator, and thus all North American DBS dishes point to the *south*. To receive our service, our customers will point their 12 GHz dish antennas to the *north*, hence our name, "Northpoint."

Each of our local systems operate with a single headend where we will pick up and encode all of the local over-the-air signals, as well as other multi-channel video programming. We will then retransmit this programming to our customers on the 12 GHz band through a series of low-cost cascading cells, each with a transmitter serving just over a 100 square mile area. These cells will be strategically located in a terrain specific manner to include service to those parts of a community that are in a valley or over a hill. In the Northpoint system, most customers will have at least 3 directions to point their dish to pick up our service. These multiple line-of-sight options will enable better delivery of local broadcast stations signals.

Low Cost to Deploy/Low Cost to Consumers

The Northpoint system can be deployed at low cost, made possible in part by the very small size of the Northpoint transmit antenna. Northpoint transmit antennas are only 10 inches tall, weigh less than 3-lbs and can be easily located on buildings and existing towers.

This low cost deployment will enable Northpoint services to be available to consumers at low costs, and bring about market pressure to reduce the prices charged by our competitors. We anticipate that our basic package might be priced at under \$20.00 per month, approximately half the price of basic cable. We will also offer customers flexible programming options.

Because we will operate in the 12 GHz band, Northpoint service can use existing DBS customer equipment. Over 10 million antennas and set-top boxes are in the marketplace, having already reached an economy of scale that has fine-tuned the products and lowered the cost for purchase by consumers.

The Northpoint System Works

We have tested Northpoint under experimental licenses since 1997 and demonstrated that can co-exist without harmful interference to existing DBS services, in both a rural and an urban area. We have filed detailed reports with the FCC on these tests that were conducted with the certification of outside engineers.

For the month of December 1998 we operated our system in a single 100-square mile cell centered in downtown Austin, Texas. DirecTV advised us that they had several thousand subscribers in the area, so we established a hot line to DirecTV's national call center and our transmission facility to address any interference issues. The customers could call DirecTV if they experienced a disruption in service, and we would turn off our transmitter to see if it solved the customer's outage. During the entire month we did not receive a single call on this hotline that was attrib-

utable to interference caused by our system. We continue operating under our experimental license in Austin today and still have not had any reports of interference.

This testing proved not only that we don't interfere with DBS, but it also demonstrated that our system is viable. We operated the system day and night, under a variety of weather conditions, including heavy rain, freezing rain and dense fog, with excellent results. Sites at almost 14 miles received a usable signal, and our signals also penetrated through foliage.

Local-to-Local Solution

A key focus of the Satellite Home Viewer Act policy discussion has been to ensure that satellite customers have access to local signals. Northpoint's locally-based, terrestrially-delivered transmission system can be expeditiously rolled out at reasonable cost, in all markets. Northpoint's capacity is sufficient to carry all stations, and for that reason we will be able to comply with a full must-carry requirement. In fact, transmission of all local stations, analog and digital, is a key element of Northpoint's business plan. The Northpoint-type technology will help preserve and expand the audience for local signals, and the NAB has recently endorsed this new approach.

DBS customers could receive local signals via Northpoint by direct subscription to the local BroadwaveUSA affiliate. In this case, the subscriber would be able to switch from terrestrial Northpoint programming to satellite DBS programming with a single click of the remote control.

The BroadwaveUSA affiliate network has also offered to make local signals available on a wholesale basis to DBS providers. Under this option, DBS providers would be able to have all local signals, in full compliance with all must carry requirements, available encoded in their own formats and integrated in their own program guides. To effect this solution, the DBS consumer will need a Northpoint antenna and a simple network interface device attached to the back of their existing DBS set top box. These upgrades are anticipated to cost \$50-\$100. In either case, Northpoint Technology provides a solution to the local signal problem.

Promotes Transition to HDTV

An aspect of the local signal issue is the capacity of satellite services to carry local-into-local HDTV programming, which will be even more bandwidth intensive than carriage of the 1,500 plus local over-the-air analog stations. Northpoint systems will be able to carry HDTV programming without compression because the locally-based systems will have adequate bandwidth to accomplish this job.

Interestingly, Northpoint may actually be one of the first to provide HDTV transmissions into many markets, thus helping to facilitate a rapid transition from analog to digital technology.

A Vibrant Competitor to Cable

In addition to addressing the local-to-local problem by providing local signals to satellite carriers, our intention is also to be a stand-alone competitor to cable. We have enough capacity to carry at least 96 channels, and we expect to offer programming packages that offer our customers dozens of cable-like channels in addition to their local stations.

This competition will bring reduced prices to the consumer. Simply by rolling back last year's average 7.8% cable price hike, \$1.6 billion could have stayed in the pockets of consumers. Moreover, because our programming will be digital, cable systems will have an incentive, not only to rein in prices, but also to upgrade their systems digitally.

We look forward to competing head to head with the cable industry on price, quality and service, the traditional dimensions of excellence. I think now, with the end of rate regulation before us, it is essential that new entrants such as Northpoint and its BroadwaveUSA affiliate network have the chance to offer services to consumers.

Puts Rural Customers on Par with Urban/Suburban Counterparts

While Northpoint is a good solution in an urban and suburban area, it has particular relevance in rural areas. Because it is a simple and inexpensive technology, it is economically feasible for it to be deployed in rural areas, where laying cable or fiber to sparse populations can be cost-prohibitive. Northpoint may be the first chance for rural consumers to gain access to low cost digital services. Because a Northpoint system is wireless and uses low cost repeaters to propagate its signal, its services can reach areas where cable has never served.

Access to the Internet

The Northpoint system can offer consumers more than simply multi-channel video programming. It is also ideally suited for the delivery of high-speed Internet services. The technology is easily capable of burst transmission rates of 1.5 megabits per second or more. And because our systems are locally-based, communities will be able to use our Internet gateway for locally-geared uses, such as interactive distance learning, or the ability of parents to monitor children in day care. The possibilities of these broadband services are vast and very promising.

At the present time, Internet services offered through Northpoint Technology would have a telephone return channel, however, in the future Northpoint could also install a simple transceiver (that is, a combination transmitter/receiver) in the customer's home and provide an all-wireless Internet service, as well as potentially telephone service via a wireless local loop solution.

Opportunities for Small Business Competitors

Another aspect of the Northpoint system, related to its low cost, is its potential to bring new entrants into the telecommunications field. Northpoint's 68 BroadwaveUSA affiliates are led by capable local business and community leaders. The involvement of such people will bring greater local participation and diversity to the media marketplace.

The FCC Role

Let me briefly review our status before the FCC. In 1994 we first presented the Northpoint concept to the FCC. We received an experimental license in 1997 to operate in Kingsville, Texas, in a rural setting, and last year we received a second experimental license in Austin. On January 8, 1999, Northpoint and our 68 affiliates filed license applications to serve all U.S. television markets.

In order to operate in the 12.2-12.7 GHz band, we need the FCC to make a few rule changes. Accordingly, a year ago we petitioned the FCC to operate a point-to-multi-point video and data terrestrial service in the 12 GHz band. Our petition is currently the subject of a Notice of Proposed Rulemaking (ET Docket No. 98-206), with comments due March 2nd and reply comments due March 29th.

As part of the rulemaking, we seek co-primary status with any other new entrants into this band. While we are willing to be secondary to existing DBS services, we must be co-primary with the low earth orbiting satellites now under consideration, and we are fully confident this can be done with properly designed low earth orbiting satellites. In fact, two of the LEO applicants are proposing systems which appear compatible with terrestrial sharing. Moreover, co-primary status would be consistent with applicable ITU regulations.

Conclusion

Given the need to address the local-to-local and cable competition issues, we hope that Congress, specifically this committee, will encourage the FCC to act expeditiously on the rulemaking and applications.

Mr. Chairman, thank you, again, for providing us the opportunity to speak before your subcommittee today. I welcome any questions you might have.

Mr. TAUZIN. Thank you, Ms. Collier.

We are now pleased to welcome Mr. Al DeVaney, President of Newsweb Broadcasting of Chicago, Illinois. Mr. DeVaney.

STATEMENT OF AL DEVANEY

Mr. DEVANEY. Thank you, Mr. Tauzin and committee members, and thank you for the opportunity to testify this afternoon.

The company that I represent owns two television stations, WPWR in the Chicago market and KTBD. Both of these stations are UHF stations and both are affiliates of the UPN network.

I also serve on the board of directors for the Association of Local Television Stations, otherwise known as ALTV. I appear today on their behalf.

ALTV represents the interests of hundreds of local television stations in this country which are not affiliates of ABC, CBS, or NBC. Most of our member stations are either Fox affiliates, UPN, WB, or PAXTV.

We have two primary concerns today. First, we wish to search for a resolution to the must-carry issue with respect to satellite carries. And, second, we wish to urge you to establish rules preserving the program exclusivity rights of local television stations.

To that end, I want to emphasize the essence of local television, and that is that every minute of every programming on our stations is selected, whether it is public affairs, entertainment, news, or sports, selected because we believe it appeals to our local community. This is not simply about network programming.

For example, we know that some syndicated programming will work in Denver, but not Chicago, and vice versa. Therefore, even nationally produced programs are specifically selected by our stations for their local market appeal. The point is we are still a hometown television station and a big part of our community.

UPN currently programs 15 hours a week of network time. We program the remaining 153 hours. Our news web stations are, if I may, excellent examples of local television and why it is important to ensure the continued survival and growth of all local television stations, particularly those affiliated with emerging networks.

WPWR in Chicago is the most recent general market station to sign on in that television market. We were losing money as recently as 1987. By 1992, our performance had improved, and we chose to give back to our community by forming the WPWR TV Channel 50 Foundation. Now, a short 7 years after the formation of that foundation, it is one of the 25 largest foundations in the State of Illinois.

In Denver we purchased KTVD in a bankruptcy auction in 1994. Today, 5 years later, it is a viable property with a substantial community-giving program that funds many Denver area nonprofit organizations. These giving programs are, of course, in addition to an ever-growing schedule of local public affairs programming and public affairs announcement.

The point is this: Stations like those that ALTV represents are extraordinarily important to our U.S. broadcasting system, and as we grow, our communities benefit in many ways, both on the air and off the air. Remember, the Fox Network began in 1987 amid predictions of failure by many experts. By creating a distribution system using mostly ALTV member stations at the time, that network has matured to rival the original three and has added another choice for U.S. viewers and strength to those local television stations.

In the past 4 years, UPN and the WB have emerged, and have begun to gain a toehold in their markets, with a distribution system made up largely of our member stations. Now with the local station lineup, PAXTV has added yet another broadcast voice to the landscape.

But the current EchoStar marketing plan, and probably the plans of the future for other DBS providers, will not include these emerging network affiliates unless you properly step in. Even a must-carry solution 3 years down the road is problematic. How much revenue loss should these stations suffer? How much of their ability to provide the best practicable service to the public should be diminished? How much loss should broadcasters absorb to en-

rich satellite carriers in the hopes of stimulating competition to cable?

Capacity is not just a technical issue. It involves business decisions. Should a carrier which has known for 3 years that it would have a must-carry obligation get a waiver at the end of those 3 years if it has done nothing to increase its capacity in order to comply with must-carry?

Before you answer all of those questions, though, please consider the following: DBS providers have absolutely no obligation to provide programming which addresses the concerns of local communities. We do. DBS providers charge subscription fees for their program service. We do not. The vast majority of excluded stations are significantly more popular than the vast majority of cable networks which they carry on their satellite services.

Why are the affiliates of entrenched networks already doing quite well on their own essentially granted preferential treatment, while the stations which have brought an unprecedented level of competition and diversity to broadcasting once again are saddled with a competitive disadvantage? Why are viewers who rely exclusively on local broadcasting being asked to bear a part of this burden? You, the Congress, made a judgment to assure the viability and vitality of local television in the face of noncarriage by cable systems. What sense does it now make to undermine that decision by letting satellite carriers impart the very same injury you sought to prevent in the cable industry through the must-carry rules?

But we are faced with that same situation today. Some stations will be carried; others will be excluded, including the likes of Una Vision, Telemundo, and local PBS stations, along with the aforementioned local affiliates of emerging networks.

Ironically, these are the stations least able to withstand the effects of not carriage. No one would deny that cutting off a portion of our market will cause us financial harm. In broadcasting, audience is revenue; it is our only source of revenue, and it is that simple.

Consequently, we are now placed at a competitive disadvantage. As independents and affiliates of newer broadcast networks, ALTV's members have done more to enhance competition than anyone would have imagined 10 or 15 years ago. We, frankly, find it inconceivable that Congress would contemplate dulling that competition in today's highly competitive video marketplace.

Thank you very much.

[The prepared statement of Al DeVaney follows:]

PREPARED STATEMENT OF AL DEVANEY, PRESIDENT, NEWSWEB BROADCASTING ON BEHALF OF THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

We are very grateful for the opportunity to testify this afternoon. Indeed, Mr. Chairman, at ALTV's recent convention in New Orleans, you initiated a dialogue with us and our fellow broadcasters on satellite use of broadcast signals and other issues. This is our first opportunity to respond formally, and we look forward to continuing our discussions with you and the subcommittee.

I am president of Newsweb Broadcasting ("Newsweb"). Newsweb is licensee of two local television stations: WPWR-TV in the Chicago market and KTVD-TV in Denver. Both our stations are affiliates of the UPN network. Both operate on UHF frequencies.¹

¹ KTVD-TV operates on channel 20; WPWR-TV operates on channel 50.

I also serve on the Board of Directors of The Association of Local Television Stations, Inc. ("ALTV"), and appear on behalf of ALTV today. ALTV represents the interests of the hundreds of local television stations in this country which are not affiliates of the big three networks—ABC, CBS, and NBC.² Most ALTV member stations are affiliates of the Fox, UPN, WB, or PaxTV networks. Some remain traditional "independent" stations, which continue to offer innovative programming specifically tailored to their communities.³ All of us define ourselves first as *local* television stations. All of our programming decisions reflect our efforts to serve our particular local communities. Every minute of programming on our stations, be it public affairs, entertainment, or news or sports, appears on our schedules because we consider it most responsive to the needs, interests, tastes, and concerns of our local communities. Our ability to reach and engage our local audiences is the key to our success.⁴

The point is we are still a home town station. We are their local source. Our studio is up the street. Our antenna is down the road. We share the same concerns about government, about schools, about local teams, about the weather. As much as every local station *serves* its community, it is a *part* of that community, as well.

Local programming and outreach are very much a part of the Newsweb stations. We are particularly proud of the following contributions to our communities:

- The WPWR Chicago 50 Foundation, which was formed in 1992 and is now one of the top 25 foundations in Illinois. It funds many non-profit community programs, which include children's education, the arts, and arts education.
- A local children's education and information show called *UPN Running*, which plays at 8 a.m. on Sundays and has grown to a nine share of audience in the first two weeks of February.
- A show called *Concerning Chicago* with 45 original productions per year.
- A Chicago public affairs show called *Talking with Aaron Freeman*, with 50 original productions a year.
- *Dimensions Northwest Indiana* with 52 original productions a year.
- Four prime time specials per year entitled *Power to Make a Difference*.

In Denver, Newsweb purchased KTVD in a bankruptcy auction in 1994 and now, five years later, the station is a viable property with a substantial community giving program that funds many Denver area non-profit organizations. In Denver we also broadcast 35 original productions a year of *Colorado Profiles*, a public affairs show, and 32 original productions of *Focus Colorado*, another public affairs show.

Indeed, this is just what Congress intended over 50 years ago when it enacted the Communications Act of 1934. It sought to engender a system of local broadcasting, where as many communities as possible had their own station or stations. Consequently, the Federal Communications Commission ("FCC") has allotted television channels in such a way that provides larger communities with more stations, but also assures that many smaller communities have their own station or stations, as well.⁵ Thus, for example, while Denver and Chicago have multiple stations, many smaller communities still have at least one or two channels assigned to them.

Over 30 years ago, when the FCC allotted channels to hundreds of communities across the country, it had a dream and hope that each and every channel someday would host a vibrant local television station. Today, we can safely say that that dream has come true. Only a handful of channels remain vacant, primarily in sparsely-populated areas.⁶ Hand-in-hand with the increase in the number of local television stations has been concomitant growth in the number of broadcast networks. Last year saw the emergence of PaxTV, the seventh national broadcast television network. Meanwhile UPN and WB have emerged and gained a toehold in the

²ALTV's membership includes stations from every region of the country. Their ownership spans the continuum from local single station owners to large media conglomerates. Their interests range from those of nationally distributed "superstations" to those of small local "mom and pop" stations. More than any of the popular cable networks, these stations have stimulated competition and enhanced program diversity for all viewers in local markets throughout our country.

³Such program formats include foreign language programming, religious programming, and other program genres of interest to particular segments of the local community.

⁴At our stations we are especially proud of our local programming and community involvement. Examples of our programming and outreach efforts are described in an attachment to my statement.

⁵*Sixth Report and Order*, 41 FCC 148 (1952). The Commission essentially reaffirmed this system by allocating digital channels in precisely the same manner that the current analog or NTSC channels were allocated. *Sixth Report and Order*, 12 FCC Rcd 14588 (1997).

⁶However, with the adoption of a new table of digital or DTV channel allotments, many of these channels no longer are available for analog stations.

market, and Fox has become established as a fourth major network. Each of these new networks has developed despite heavily UHF affiliate bases.⁷

As the decade of the nineties began, few would have predicted the existence of seven broadcast television networks in 1999. Many stations were running headlong into an impenetrable barrier to survival and success—the refusal of many cable systems to carry their signals. Although the FCC as early as 1966 had adopted rules requiring cable systems to carry all local television stations’ signals, cable interests had persuaded the courts that such rules were an unnecessary infringement of cable operators’ editorial discretion and, therefore, violated the first amendment. Most stations were carried by most cable systems. Some stations might be suffering some injury, but most stations were surviving if not thriving. No blood. No foul.⁸

Congress found this reasoning repugnant! It had not directed the FCC to allocate television channels in an equitable fashion just to watch many channels lie fallow or many stations limp along, cut off from the audiences they were licensed to serve. It insisted that *all* channels allocated for television stations present the opportunity for success. It insisted that *every* station have the opportunity to serve its local community. It insisted that *all* stations be carried by cable systems in their local communities.⁹ This time the Court understood. It understood that Congress long ago had contemplated a nationwide system of television stations, licensed to and serving local communities.¹⁰ It understood the value of such a locally-oriented broadcast television system, particularly to viewers who depend exclusively on broadcast television service.¹¹ It also understood that a station deprived of access to its audience would suffer, its service would deteriorate, its viability would be in jeopardy.¹² It, therefore, upheld the cable television must carry rules which Congress had enacted in the 1992 Cable Act.

The history of the television industry in the wake of the 1992 Cable Act and the Supreme Court’s decision upholding the must carry rules stands as testament to the wisdom of those rules. With renewed vigor, many stumbling stations found new

⁷ UHF stations continue to suffer from inferior coverage, due to the propagation characteristics of UHF television signals. Whereas cable television carriage has offset this disadvantage to a certain extent, UHF stations continue to operate at a disadvantage *vis-a-vis* their VHF competitors.

⁸ In the gap between 1986 and 1992, when no must carry rules were in effect, many television stations, in fact, lived on the margin, flirting daily with bankruptcy and providing only the most limited service to their communities. Many stations were rescued from the brink of financial ruin in 1992, when the current cable must carry rules were enacted. See *Turner Broadcasting System, Inc., v. FCC*, 1997 U.S. LEXIS 2078, 42 *et seq.* (1997) [hereinafter cited as *Turner II*].
⁹ 47 U.S.C. § 534.

¹⁰ *Turner II*, 1997 U.S. LEXIS 2078, 24 (1997) (“We have noted that ‘it has long been a basic tenet of national communications policy that ‘the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.’” *Turner*, 512 U.S., at 663-664 (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668, n. 27 (1972) (plurality opinion) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945)); see also *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594 (1981). “Increasing the number of outlets for community self-expression” represents a “long-established regulatory goal in the field of television broadcasting.” *United States v. Midwest Video Corp.*, *supra*, at 667-668 (plurality opinion).”).

¹¹ *Id.*, 1997 U.S. LEXIS 2078 at 19-20. (“We have been most explicit in holding that “protecting noncable households from loss of regular television broadcasting service due to competition from cable systems’ is an important federal interest.” *Id.*, at 663 (quoting *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 714 (1984). Forty percent of American households continue to rely on over-the-air signals for television programming. Despite the growing importance of cable television and alternative technologies, “broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation’s population.” *Turner*, *supra*, at 663 (quoting *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177 (1968)).

¹² *Id.*, 1997 U.S. LEXIS 2078 at 50-52. (“The harm Congress feared was that stations dropped or denied carriage would be at a “serious risk of financial difficulty,” 512 U.S., at 667, and would “deteriorate to a substantial degree or fail altogether.” *Id.*, at 666. Congress had before it substantial evidence to support its conclusion. Congress was advised the viability of a broadcast station depends to a material extent on its ability to secure cable carriage. JSCR PP597-617, 667-670, 673 (App. 1544-1553, 1580-1581, 1582-1583). One broadcast industry executive explained it this way: “Simply put, a television station’s audience size directly translates into revenue—large audiences attract larger revenues, through the sale of advertising time. If a station is not carried on cable, and thereby loses a substantial portion of its audience, it will lose revenue. With less revenue, the station can not serve its community as well. The station will have less money to invest in equipment and programming. The attractiveness of its programming will lessen, as will its audience. Revenues will continue to decline, and the cycle will repeat.” Hearing on Competitive Issues, at 526-527 (statement of Gary Chapman) (App. 1600). See also JSCR PP589-591 (App. 1542-1543); *id.*, P625-633, 636, 638-640 (App. 1555-1563) (repositioning). Empirical research in the record before Congress confirmed the “direct correlation [between] size in audience and station [advertising] revenues,” *id.*, P591 (App. 1543)), and that viewership was in turn heavily dependent on cable carriage. See *id.*, PP589-596 (App. 1542-1544).”).

lives as affiliates of the emerging networks.¹³ The viewing public in community after community enjoys better programming from more stations, stronger stations, and additional broadcast networks. Never would this have been possible if cable systems had been permitted to slough off carriage of weaker stations.

Now Congress appears to us poised to take a step backwards, although it will be under the guise of a giant leap forward. Some satellite companies are urging you to permit them to retransmit the signals of local television stations to subscribers in the stations' home markets. This so-called "local-into-local" service would allow satellite companies to provide a complement of local signals just like cable operators do. They say, and conventional wisdom has agreed, that the ability to provide local signals will make them a true competitor to cable television. Fostering such competition to cable television is seen as a good thing. Therefore, permitting satellite carriers to provide local stations' signals to their subscribers will be a positive step, or so they say.¹⁴

As true as this may be, it must not obscure the dangerous setback it portends. Whatever the benefits of local-into-local satellite carriage may be, the ability to carry local signals under a compulsory license unaccompanied by rules prohibiting discrimination among local stations also would impose costs. In our view, these costs are unacceptable—and avoidable. Thus, ALTV has favored amendment of the compulsory license to permit local-into-local signal carriage, but only if satellite carriers also are required to carry *all* local signals in any market where they elect to provide local-into-local service.¹⁵ Such a provision assures that local market competition will not be skewed in favor of some stations and to the detriment of others.

This concern is no less genuine than it was in the case of cable television. We know that many stations stand to be excluded from EchoStar's complement of local signals in their home markets. As was the case with cable, satellite carriers like EchoStar are poised to provide a local-into-local service which includes only the big network affiliates in the markets it serves. Whereas EchoStar boldly advertises carriage of the ABC, CBS, NBC, and Fox affiliates in markets where it is providing local signals, carriage of the local UPN, WB, or PaxTV affiliates and any independents is doubtful. Indeed, in testimony before the Senate Antitrust and Business Rights Subcommittee last month, EchoStar CEO Charles Ergen testified that, "[W]e offer the four network stations, and in some cities a couple of independents as well."¹⁶ A visit to EchoStar's Dish Network website confirms that "the four network stations" are the only commercial stations carried in their local-into-local markets.¹⁷ As for the local UPN, WB, and PaxTV affiliates, little or no carriage is contemplated. Therefore, we are faced with the same situation which confronted Congress in 1992 with respect to cable carriage. Some stations will be carried; others will be excluded, including the likes of Univision, Telemundo, and *local* PBS stations.

More to the point, the excluded stations will be the same stations which owe their vitality, if not their very viability to the cable must carry rules. Ironically, these are the stations least able to withstand the effects of noncarriage. No one would deny

¹³ Notably, many stations were able to abandon home shopping formats which helped them remain marginally viable despite lack of cable carriage in favor of more conventional formats. The home shopping format on broadcast stations largely was a product of the lack of must carry rules prior to the 1992 Cable Act. Many new and marginal stations which were refused carriage by local cable systems turned to home shopping as a means of survival. Since the new must carry rules for cable became effective, many of these stations have gained sufficient economic strength to discontinue their home shopping formats. Of these, many have become affiliates of the emerging UPN and WB networks. In short, they have gained a foothold and begun to provide an increased diversity of informative and entertaining programming to their communities.

¹⁴ The availability of a few local signals in a very limited number of markets may fall well short of expectations as a means of attracting new customers to DBS (and away from cable). Substantial up front costs, which include not only a dish and receiver (or more if the consumer wishes to connect all sets in a multi-set household), but also installation costs and often advance payment of program service fees, are a considerable price to pay for an incomplete line-up of local signals. How many cable subscribers would trade even a high monthly cable bill for a lesser service (in terms of local signals) with substantial upfront costs?

¹⁵ ALTV does not propose that satellite carriers be forced to carry local signals in every market (as is required of cable systems). However, if a satellite carrier retransmits the signal of one local television station in a market to subscribers in that market, then it should be required to carry all local stations in that market or at least provides a satellite subscriber with the same local signals a comparably situated cable subscriber would have available from its cable system. This would maintain parity between competing media by assuring that the satellite carrier were subject to no more rigorous obligations than a directly competitive cable system.

¹⁶ Testimony of Charlie Ergen, before the Antitrust and Business Rights Subcommittee of the Senate Committee on the Judiciary (January 27, 1999) at 6. [Hereinafter cited as "Ergen Testimony"].

¹⁷ See, e.g., www.dishnetwork.com/programming/local/dc.htm.

that a station cut off from a portion of its audience will suffer financial harm. In broadcasting audience is revenue, our only source of revenue.¹⁸ It is that simple. Consequently, literally having been rescued by the cable must carry rules and having struggled to establish a beachhead in their assault on the three entrenched network's dominance in their markets, these independents and emerging network affiliates again find the sand eroding beneath them as they are placed by EchoStar at a distinct competitive disadvantage in their local markets.

Some might respond cavalierly that broadcasters are making enough money anyway. Some are. Others are not. As illustrated in Table One, below, at least one quarter of the nation's stations operate at or below the fringe of profitability. Thus, not all Fox affiliates in the lower 25th percentile operated at a profit in 1997; none of the affiliates of UPN and WB and none of the independents in the lower 25th percent operated profitably. These, of course, are the stations for which must carry remains essential.

Others might respond that whereas cable systems have enormous market power, serving over 60 per cent of television households, satellite carriers serve less than 10 per cent of the nation's television households. Therefore, if a local station is excluded from carriage on a DBS service, the impact would be negligible. Wait, they say, until we are really a factor, like cable.

Table One
Lower 25%ile—1997—All Stations

Affiliation	Net Revenue	Pre-Tax Profits
ABC	\$5,782,003.00	\$80,911.00
CBS	\$5,850,992.00	\$42,180.00
Fox	\$4,306,143.00	\$27,907.00
NBC	\$5,870,325.00	\$393,136.00
UPN	\$2,543,646.00	(\$424,570.00)
WB	\$3,085,436.00	(\$1,331,907.00)
Independent	\$2,451,508.00	(\$228,336.00)

Source: 1998 NAB/BCFM Television Financial Report

That is easy to say when it is someone else's money. That is even easier to say when that someone else is something of a competitor. Injury is injury, and we will feel it, whether it be a trickle of blood from a minor scratch to a gushing artery from a slash to the bone. Even where revenue reductions are less than fatal, they still affect a station's ability to provide the best practicable service to the public.¹⁹ At best, a local station which a satellite carrier refuses to carry would be placed at a demonstrable disadvantage vis-a-vis competing broadcast television stations which are carried.²⁰

Furthermore, is anyone in the DBS business to stagnate? The whole point of this effort to gain use of local signals is to enhance the competitive appeal of DBS service. If, indeed, it does, we must assume that the number of DBS subscribers will increase. Is this not the vision of Congress, the FCC, and, certainly, every DBS provider? They hope to attract not only noncable households in remote areas, but also cable subscribers in core market areas. Indeed, they would hope to supplant cable as the home's multichannel video provider. One easily may anticipate the day when nearly all television households are served by a multichannel video provider, most likely cable or DBS. Together, they will serve the vast majority of television households, and each will have a sufficient market share, such that if either of them failed to carry some local stations, the stations' viability would be threatened.²¹

Let me put it another way. How much revenue loss should my stations suffer, how much of their ability to provide the best practicable service to the public should be diminished, how much loss should broadcasters absorb to enrich satellite carriers in the hope of stimulating competition to cable?

¹⁸ *Turner II*, 1997 U.S. LEXIS 2078 at 50-52.

¹⁹ See *Memorandum Opinion and Order*, 8 FCC Rcd 8270, 8294, n.64 (1993), *affirmed sub nom. Capital Cities/ABC, Inc., v. FCC*, No. 93-3458 et al. (7th Cir., decided July 12, 1994) [citations omitted] ("[W]e believe that...enhancing the financial well-being of independent stations...inevitably helps to support local programming efforts...[S]uch efforts further enhance program diversity.")

²⁰ See also *Turner II*, 1997 U.S. LEXIS 2078, *51-*55.

²¹ At the very least passed over stations would be placed at a meaningful competitive disadvantage not only against their local broadcast competitors, but also against the competing multichannel video providers.

Before you answer, consider the following:

- DBS providers have no obligation to provide programming which addresses the issues of concern in Chicago or Denver or any local community. We do.²²
- DBS providers charge subscription fees for their program service. We don't.
- The vast majority of excluded stations are more popular than the vast majority of cable networks carried by satellite carriers.²³
- Satellite carriers, like cable systems, will enjoy a compulsory license which insulates them from a highly competitive programming marketplace with respect to their carriage of local television station signals.²⁴
- Why are the interests of viewers who rely exclusively on local broadcasting asked to bear a diminution in service?
- Why are affiliates of the entrenched networks like ABC, CBS, and NBC essentially granted preferential treatment, while the stations which have brought an unprecedented level of competition to broadcast television once again are saddled with a competitive disadvantage?
- You, Congress, made a judgment to assure the viability and vitality of local television stations in the face of noncarriage by cable systems. What sense does it make to undermine that decision by letting satellite carriers impart the very same injury you sought to prevent in the cable must carry rules?

As independents and affiliates of, first, the fledgling Fox network, which now has become a powerhouse, and emerging networks, which also will grow, like UPN, WB, and PaxTV, ALTV's members have done more to enhance competition than anyone would have imagined. We frankly find it inconceivable that Congress would contemplate dulling that competitive edge of competition in the video marketplace.

You also may hear, as Charlie Ergen is fond of saying, that injury to us UHF stations will be insignificant because UHF stations have such small coverage areas anyway. Thus, he would say, most of his subscribers reside in areas which we could never hope to serve anyway. What he ignores is the fact that many UHF stations enjoy cable carriage throughout their markets. Indeed, if the DBS providers are seeking to compete with cable, they will be targeting cable customers. Every time a cable subscriber in my market drops his cable service (which is required to carry my signal) in favor of DBS service (which is not required to carry my signal), my station will lose access to that viewer.

²² Competitive injury to broadcast stations raises serious public interest issues absent in the case of exhibition of nonbroadcast programming by multichannel video providers. Unlike other video providers, local television stations are licensed by the federal government to operate in the public interest. They must provide programming dealing with issues of local concern in their communities. Their political programming is subject to strict requirements to assure equitable treatment of opposing candidates. Programming responsive to the educational and informational needs of children must be broadcast in specific amounts during specified portions of the day. Indecent material is confined to late night hours.

²³ As the Court repeatedly and consistently has observed, "[B]roadcasting is demonstrably a principal source of information and entertainment for a great part of the nation's population." *Turner II*, 1997 U.S. LEXIS 2078, 19, 23, 46. ("Even aside from that, the evidence overlooks that the broadcasters added by must-carry had ratings greater than or equal to the cable programs they replaced. Second Meek Declaration P23 (App. 1863) (ratings of broadcasters added by must-carry "are generally higher than that achieved... by their equivalent cable counterparts"); Meek Declaration P21, at 11-12 (Record, DAE, Vol. II.A., Exh. 2); see also Hearings on Cable Television Regulation, at 880 (statement of James Hedlund) ("in virtually every instance, the local [broadcast] stations shifted are more popular... than the cable program services that replace them"); JSCR PP 497-510 (App. 1505-1509) (stations dropped before must-carry generally more popular than cable services that replaced them).")

²⁴ We do not begrudge them the compulsory license, but we do oppose that compulsory license's becoming a vehicle for upsetting the balance of competition in local television markets. Historically—and rightly—the cable and satellite compulsory licenses have carried with them the complementary obligation to use broadcast signals in a manner consistent with preserving the many benefits of free broadcast television service. Notably, Congress determined to adopt a compulsory license for cable only in conjunction with FCC rules which defined the scope and prerequisites of the license. *Cable Television Report and Order*, 36 FCC 2d 143 (1972). Thus, the adoption of FCC rules in 1972 preceded the establishment of the compulsory license in the 1976 Copyright Act. See Letter from The Honorable John L. McClellan, Chairman, Subcommittee on Patents, Trade-Marks, and Copyrights, United States Senate, to the Honorable Dean Burch, Chairman, Federal Communications Commission (January 31, 1972), reprinted at Appendix E, *Cable Television Report and Order*, supra, 36 FCC 2d at 287 ("[I]t is the intention of the subcommittee to immediately resume active consideration of the copyright legislation upon the implementation of the Commission's new cable rules."). Had the compulsory license preceded the adoption of the FCC's signal carriage rules, then the rampant unregulated use of broadcast station signals by cable systems would have become impossible to harness. Even in 1972, the FCC grandfathered all existing signal carriage so as to avoid depriving consumers of signals to which they had become accustomed. *Cable Television Report and Order*, supra, 36 FCC 2d at 185.

In a similar vein, we find demonstrably inadequate the concept of providing local signals via an off-air antenna sold and installed in conjunction with a DBS dish. Off-air viewers will enjoy none of the benefits of digital picture quality, none of the benefits of inclusion in the DBS on-screen program guide, and none of the benefits of seamless surfing. We hardly are saying that anything is wrong with off-air reception. The true issue, though, is whether my competitor, an entrenched affiliate of a big network will have advantages in access to consumers that are denied my station.²⁵

You also will be told that viewers will lose nothing because the DBS provider will offer them the signal of a UPN, WB, or PaxTV affiliate from another market. Suggestions that availability of national feeds of emerging network signals is an adequate substitute for carriage of the local affiliate are specious. First, from the viewer's perspective, critical elements of local service would be lacking. A national feed or the signal of a distant affiliate of the network offers no local programming, whether public affairs or entertainment programming, news, information, or weather, all selected because it responds and appeals to local needs, tastes and interests. Indeed, on most emerging network stations, the majority of programming is non-network programming. Second, the damage to the local affiliate is compounded. Instead of making any effort to watch the local affiliate, viewers searching for network programming likely will take the path of least resistance and watch the readily available satellite-fed station or national network feed. Third, networks thrive on the strength of their affiliates. Strong affiliates attract larger audiences for the network. A national network feed or a distant affiliate offers the network none of the boost provided by a popular local and locally-attuned affiliate station. Nothing could strike more cruelly at the heart of our nation's system of local broadcasting.²⁶ Again, it is the local station which serves and programs to the local community. Not only is it obligated to do so, it thrives on doing so. From a consumer perspective, how will a viewer watching *Dilbert* on a station from a thousand miles away be alerted to a tornado blocks from his home? My station, the local station, would be broadcasting a warning. The substitute station will not. Neither would the DBS provider. Indeed, viewers might well fail to realize that their network programming is coming from a distant station and, therefore, expect to receive local weather warnings. Charlie Ergen has labelled this concern "a little bit of hysteria."²⁷ No hysterics are at work here. Distant network stations are no substitute for local affiliates. The lack of local weather information is just the tip of the iceberg.²⁸

We are well aware that Congress is sympathetic to the need to assure carriage of all local stations—and we are, indeed, deeply appreciative that you understand our concerns. Our anxiety, as you also well know, arises from proposals to defer the effective date of a must carry regime for several years. We made plain our objections to deferred must carry in hearings before this subcommittee in the last Congress.²⁹ While we are reticent to belabor those objections, they are real, they are sound, and we hardly may ignore them.

Delayed must carry handicaps my stations and any station not carried in a tremendously competitive marketplace. The big three or four network stations are carried, while UPN, WB, and PaxTV affiliates, to say nothing of numerous independent stations are not. This disadvantage will increase with every new satellite subscriber. Even if a transition to full must carry is completed as scheduled, many ALTV member stations will have suffered a setback in their efforts to establish a truly competitive position against their entrenched competitors in their markets.³⁰

Moreover, we remain deeply concerned that must carry deferred is must carry denied. Such deadlines can slip and often do. For example, when Congress enacted the original satellite Home Viewer Act in 1988, it contemplated termination of the satellite compulsory license in 1995. However, once the public began to receive broadcast television station signals on their satellite systems, Congress essentially for-

²⁵ As Congress recognized in the channel positioning requirements in the must carry law, access alone often is insufficient. Many stations were carried, but on channels far removed from the major network affiliates, where consumers had trouble locating them.

²⁶ Indeed, this reflects the concern of the major network affiliates with respect to the availability of distant affiliate signals in other than unserved households.

²⁷ Hearing before the Subcommittee on Telecommunications, Trade, and Consumer Protection of the Committee on Commerce, House of Representatives, on H.R. 2921 and H.R. 3210, No. 105-80 (April 1, 1998) at 130 [hereinafter cited "1998 Hearing"].

²⁸ Notably, the tip of the iceberg sank the Titanic. See also Letter of July 8, 1998, to Chairman Tauzin from James J. Popham, Vice President, General Counsel, ALTV, referring to *Electronic Media* (July 6, 1998).

²⁹ See 1998 Hearings at 91-101.

³⁰ In addition, the impact will be felt at a time when local stations are spending millions of dollars to convert to digital transmission, pursuant to FCC imposed deadlines.

feited the ability to eliminate the compulsory license. It was extended in 1994, and no one seriously expects Congress to let it expire at the end of this year. The public simply would not stand for being deprived of signals they have received for years under the compulsory license.³¹ The same result is predictable under deferred must carry. If (we dare say “when”) satellite carriers protest that compliance with must carry requirements would be impossible and threaten to withdraw all broadcast signals from their services to sidestep the must carry requirements, Congress will find itself in the same untenable position.³² We are dubious of the satellite industry’s willingness and ability to comply with must carry rules within the near future.³³ Therefore, we look for some assurance from them that they will be able to comply with must carry rules and will comply, that they will not come rushing back to Congress in two or three years claiming that they just have not had long enough to come into compliance. We humbly ask some assurance from Congress that it will stand by any deferred must carry law it passes.

Let me emphasize that unlike Nikita Krushchev at the United Nations, we are not here to pound our shoes on the table and leave in a tantrum. We heard the Chairman’s call for dialogue and we heed that call. We want a solution that is sound and realistic. So, to move the dialogue along, I am posing some alternatives for discussion.

At the outset, ALTV continues to believe that a “carry-one, carry-all” requirement, effective immediately, but on a market-by-market basis, would provide the best short and long-term solution. The practical effect of imposing such a requirement on satellite providers would be marginal. As EchoStar’s conduct illustrates, satellite carriers would be likely to carry some local stations voluntarily. Therefore, such a requirement typically might require a satellite carrier to provide only a few additional local signals, such as those affiliated with newer networks like UPN, WB, and PaxTV. At worst, under current technological limits on capacity, compliance might require a satellite carrier to forego local signal carriage in a few markets in order to accommodate all local signals in other markets.

EchoStar’s behavior confirms this. EchoStar continues to add national networks and pay services to its array of available services.³⁴ While invoking a *self-imposed* limit on capacity devoted to carriage of local signals, it continues to use its system increasingly as it was designed to be used— to provide programming of nationwide interest on a nationwide basis.³⁵ EchoStar’s alleged capacity shortage also is a function of EchoStar’s decisions with respect to the aggregate number of channels devoted to local carriage and the allocation of those channels among markets. EchoStar has made a decision to use a finite portion of its overall capacity to provide a few signals to a substantial proportion of the nation’s households. Alternatively, EchoStar might have provided all signals, but in fewer markets initially. Again, this is much more a function of EchoStar’s business plan than any short-

³¹ We distinguish here between the equities in favor of satellite subscribers who have long enjoyed superstation and network signals on their satellite systems in a manner consistent with the law and those that have taken advantage of satellite distributors’ willingness to blink the restrictions on providing network signals in other than unserved areas.

³² Section 337(b) of the bill (page 7, lines 9-10) subjects only “satellite carriers retransmitting television broadcast signals” to the must carry requirement. Thus, a satellite carrier could escape the must carry rule by carrying no broadcast signals.

³³ Indeed, the testimony of EchoStar CEO Charles W. Ergen at the hearing last week confirms that EchoStar “will not have the space” to carry all local stations in each market. In the face of readily predictable public outrage at the threatened reduction in their satellite program options, Congress, rather than adhere to the deadline, would have no choice, but to extend it. Ergen Testimony at 6.

³⁴ See copy of a recent Dish Network promotional flyer, attached hereto.

³⁵ Purported technological limits on satellite channel capacity result from poor planning rather than inherent limitations on satellite distribution technology. Nothing stopped EchoStar from designing its system to accommodate local signals. Satellite systems may be configured to provide for carriage of all local signals. The Capital Broadcasting plan erases any doubt in that regard. Capacity becomes an issue, however, when satellite systems have been designed with limited capacity for local signals. EchoStar, currently employing only CONUS and half-CONUS footprints for local-into-local, is a prime example. In contrast, Capital Broadcasting system will be configured to provide local carriage via use of spot beams. Spot beams, of course, provide signals to geographically isolated areas and, thus, permit re-use of frequencies in multiple areas. Such systems permit efficient use of spectrum, which expands capacity to the extent that full carriage of local signals in all served markets can be accomplished. EchoStar’s system never was designed to operate with comparable efficiency. Even when local signals are carried by EchoStar, they are transmitted all over the country. This is an enormous waste of spectrum. A system designed to provide nationwide and regional services necessarily will claim capacity shortfalls in the context of providing local services. In reality, however, this really boils down to a matter of system design rather than inherent technological constraints on satellite system capacity.

coming in satellite distribution technology.³⁶ In sum, attempts to provide local signals on satellite systems designed to provide national services on a nationwide basis, rather than inherent technological limitations on satellite capacity, create an appealing, but ultimately specious basis for satellite carriers' alleged lack of capacity to carry all local signals.

In the context of a deferred must carry requirement, our concerns would be eased considerably if satellite carriers were permitted to offer local signals in a market only upon a showing to the FCC that they would be capable of complying with the must carry requirement when it became effective. This showing also would have to include a certification that the satellite carrier would comply with the must carry rule on the effective date. Furthermore, the failure to comply with the rule in full on the effective date would result in automatic termination of the ability to carry any local or distant signals in the noncompliant market, as well as suspension of the compulsory copyright license in that market.

Another provision, something of a safety valve, also would allay our fears and limit our susceptibility to harm. Under the provision we propose, the must carry rules would become effective immediately (regardless of the deferred effective date) in any market where the satellite carrier provided any local signal and served a specified percentage of households in the market. Mr. Ergen has said that "must-carry, if imposed at all, should be pegged to a penetration test in each market."³⁷ We may joust over what that percentage should be. Indeed, we may never agree, but the shared embrace of the concept does suggest the need to explore this proposal as a solution to our concerns and establishment of an effective must carry regime.

I also want to mention another problem which may arise in connection with satellite carriage of local signals. Satellite carriers' access to local signals under the compulsory license also must come only with the assurance that sound technologies exist to prevent out-of-market access to such signals. Under some plans to provide local signals (e.g., EchoStar), most (if not all) local signals will be available throughout the nationwide footprint of the satellite retransmitting the signals. The potential for mischief is great—as evidenced by the *contretemps* which has erupted over provision of network signals outside unserved areas. Adequate legal sanctions must exist to penalize and deter effectively unauthorized out-of-market access to the signals of retransmitted broadcast signals.

The satellite compulsory license also must be accompanied by provisions preserving local stations' exclusive rights to their network and syndicated programming.³⁸ Presently, cable television systems are subject to FCC rules which protect the exclusive rights of local stations to exhibit network and syndicated programming in their markets. These rules generally prohibit a cable system from retransmitting a program broadcast by a station carried by the system if a local station has exclusive rights to the program in the geographic area served by the cable system.³⁹ This rule now ought to be applied to satellite carriers as well.⁴⁰ No reason exists to provide stations the ability to secure exclusive rights in one portion of the copyright law, but negate that right in another. Indeed, in an ever more competitive marketplace, any video provider's ability to maintain its exclusive rights becomes even more valuable and critical to its ability to offer a distinctive, competitive program schedule.

Congress initially directed the FCC to adopt exclusivity rules for satellite carriers in 1988. However, the FCC found application of a "syndex" rule technically

³⁶ EchoStar now apparently wants an *ex post facto* Congressional imprimatur on its limited local service, a few signals in a few markets, which appears more an afterthought and epitomizes poor planning and consummately wasteful use of satellite frequencies. However, no reason exists to mold a federal statute to accommodate the business plan of a single satellite carrier.

³⁷ Ergen Testimony, *supra*, at 6.

³⁸ ALTV in like vein urges retention of the current prohibitions on commercial substitution, which appear in both the cable and satellite compulsory licenses. 17 U.S.C. §§ 111(c)(3) and 119(a)(4), respectively. Commercial substitution involves far more than a mere secondary retransmission and is inimical to the interests of the station carried, local stations, and copyright owners. As such, this limitation on the compulsory license should remain beyond controversy.

³⁹ Thus, for example, a cable system in Washington, D.C. must delete a broadcast of *Home Improvement* from a distant signal if a Washington, D.C., station has an exclusive right to exhibit the program in Washington. (N.B. Under § 73.658(m) of the FCC rules, a station may secure in its program license agreement geographic exclusivity within a 35-mile radius of its community of license.)

⁴⁰ This need is recognized implicitly in the Satellite Home Viewer Act of 1994, which imposed a higher fee for satellite retransmission of superstation signals which otherwise would be subject to program deletions under the FCC's syndex rules. See 17 U.S.C. 119(b)(1)(B)(I). This is a poor substitute for the ability of a station to preserve the exclusive rights it bargained and paid for in acquiring local exhibition rights to a syndicated program.

unfeasible in 1989. Now question of feasibility deserves another look.⁴¹ Technology has advanced on numerous fronts. Satellite carriers already protect local sports blackout requirements. Provision of syndicated program exclusivity would add only bulk, but no additional complexity to the process.⁴²

Moreover, we are in a far different world in 1999. In 1988, satellite carriers were C-band services transmitting signals to large dishes in rural areas. Now tiny DBS dishes are very much in evidence in populous urban areas as well as the countryside. Millions of dish owners now receive not only distant network stations, but also superstations. As much as the public will wish to keep their superstations, the local stations deserve the right to protect the exclusive program rights they have bought and paid for in a free, marketplace negotiation. Thus, syndicated, network, and sports exclusivity rules ought be adopted now.

Finally, we must express our full support for the NAB position on the controversial issues surrounding service to unserved households under the Satellite Home Viewer Act. The utter disdain for the law exhibited by some satellite carriers is intolerable and ought not be rewarded. Furthermore, the FCC has reached a sound decision in its consideration of this matter. It offers the opportunity for a solution to the issue which will be fair to all.

Again, we reiterate our desire to join and accelerate the dialogue Chairman Tauzin offered at ALTV's convention last month. When all is said and done, we know that our stations provide an invaluable service to the public—a service that never ought be sacrificed injudiciously. When all is said and done, we know that our stations provide unprecedented competition to cable—and to entrenched networks. When all is said and done, we know that Congress has stepped in to assure that cable systems not rob local television stations of the opportunity to compete in their local markets. When all is said and done, we ask no more than that today.

Mr. TAUZIN. Thank you very much, sir.

We are now pleased to welcome Mr. John Hutchinson, Executive Vice President of Local TV on Satellite of Riley, North Carolina.

STATEMENT OF JOHN HUTCHINSON

Mr. HUTCHINSON. Thank you, Mr. Chairman, distinguished members. I am really excited about bringing the good news of another great solution to this dilemma we find ourselves in.

I am John Hutchinson from Local Television on Satellite, known as LTVS, with our headquarters in Raleigh and our technical team in Los Angeles. We were founded by Capital Broadcasting Company and its subsidiary, Microspace. Now Microspace is the largest provider of transponder capacity for data and audio services around the world. So we have been in both businesses.

Our mission is to address the No. 1 obstacle that limits direct broadcast satellites from offering consumers a truly competitive alternative to cable, the lack of the local TV stations. LTVS has innovated a means of using the new KA band satellites with market-specific spot beams to effectively multiple our capacity 20-fold. Now that means that, for the first time, most U.S. satellite homes can get all of their own local stations on the same dish.

⁴¹ The need for similar network exclusivity or nonduplication protection is equally compelling, depending on the ultimate scope of the satellite compulsory license. Under the current satellite compulsory license, network affiliates may be retransmitted only to subscribers without terrestrial access to the network's programming via a local affiliate of the network. Thus, infringement of a local affiliate's exclusive rights to its network programming is unlikely. A network exclusivity or nonduplication rule has no purpose in the context of the current "white area" limitation. Similarly, if satellite carriers may secure a compulsory license to retransmit the signals of network affiliates *only* in their home markets, then such rules would be unnecessary. Again, with the emergence and development of Fox, UPN, WB, and, now, Pax Net, more stations ultimately may fall under the definition of network affiliate for purposes of the satellite compulsory license.

⁴² Compliance burdens also would be reduced by the fact that some superstations are, indeed, "syndex-proof" (*i.e.*, their national satellite feed contain no programming which would infringe the exclusive rights of local stations).

We have integrated this new technology with a business plan to deliver the entire signal of all full-service local stations in each market served upon the initial launch. That should address 75 percent of the U.S. households just as soon as possible, therefore, alleviating many of the Satellite Home Viewer Act problems. The distant signals will not be needed for most subscribers.

Now by entire signal, we mean the new full digital bandwidth that delivers the highest-definition television standard and multicasting that is the future of American television.

Two bidding satellite builders have our designs ready to begin construction on July 1 of this year. However, we cannot practically move forward on this 30-month construction project until Congress passes the enabling legislation. So my primary purpose today is to seek passage of that legislation, to make local-to-local TV on satellite a reality.

In order to move the LTVS plan, or, for that matter, a similar plan by any other entity, we first need a compulsory copyright license. Cable presently has such a compulsory license like we need. The legislation we seek would match cable by being subject to retransmission consent and must-carry. Such parity provisions mean broadcasters maintain control of their signals and no qualifying stations are denied access to their viewers. The broadcast economics that support free over-the-air television and localism are preserved.

Last month Representative Richard Burr introduced the Satellite Access to Local Stations Act, H.R. 89, which already has more than 50 sponsors. LTVS supports the Burr bill either as part of a comprehensive bill or as a standalone bill.

Now as for this must-carry issue, any legislation that would permit transitional must-carry until the year 2002, as some have suggested, must explicitly provide for all stations in the market being mandatory by the end of that transition period. To assure timely compliance, DBS providers who choose to carry local stations must file a report with the Federal Communications Commission on January 2001, a year ahead, demonstrating that they will be in compliance by 2002, a date certain for must-carry.

Our business plan is aggressive, but it is realistic if passage occurs now or by early in the second quarter. That timetable will allow local service to be available by January 2002.

Turning briefing to the technical plan, two high-powered satellites are to be launched in the fall of 2001. They will be co-located in the same orbital arc as the present Direct Broadcast Satellites use, the Direct TVs and the EchoStars. What that means is a single dish at the subscriber's home would see both the national DBS channels and all that market's local stations, including their broadcast networks.

Our higher digital standard does require about five times the transponder capacity of the analog television we have known in the past, but our high-definition, full-digital design is going to be required because of the 15-year life of these satellites. Otherwise, the system would quickly become obsolete. Hence, the evolution of our plan to stretch to 75 percent of America at a standard that will survive.

While we do have a technical plan for phase 2 to address the remaining 25 percent and more satellites, we invite your ideas for a viable business plan to support its very different economics. Yet, without timely passage of the enabling legislation, neither LTVS nor any other company can begin to develop local-to-local satellite solutions. This is a giant first step, but we need the lead time.

Finally, from a public policy perspective, LTVS is good for the consumer, good for the DBS industry, good for broadcasters. The plan furthers the goal of making DBS more competitive with cable, with the bonus of facilitating the rollout of digital high-definition television across America.

With your enactment of the legislation, LTVS can level the playing field as basic cable in the sky. One dish, one box, one bill—the long-term solution for subscribers who want choice.

Thank you for giving me this opportunity to talk about it.

[The prepared statement of John Hutchinson follows:]

PREPARED STATEMENT OF JOHN HUTCHINSON, EXECUTIVE VICE PRESIDENT AND
CHIEF OPERATING OFFICER, LOCAL TV ON SATELLITE, LLC

Good morning, and thank you for inviting me to appear at today's hearing. I am John Hutchinson, Executive Vice President and Chief Operating Officer of Local TV on Satellite, LLC ("LTVS"). I have been a broadcaster for almost thirty years and have served in almost that number of different roles, ranging from creative production to business management. Immediately prior to joining LTVS this past summer, I served as television group head for Jefferson-Pilot's stations in the Southeast. In addition to myself, the full-time officers of LTVS include Jeff McIntyre, Vice President of Broadcasting, Jerry Parker, Vice President of DBS Distribution, and Teresa Artis, General Counsel and Vice President of Business Affairs. LTVS is a Delaware limited liability company founded in 1997 by Capitol Broadcasting Co., Inc., its subsidiary, Microspace Communications Corporation ("Microspace"), and certain shareholders. Microspace is the largest provider of transponder capacity for broadcast data and audio satellite services in the world.

LTVS was founded to develop a basic local television station satellite delivery service, like basic cable, that will deliver via Direct Broadcast Satellite ("DBS") all local television stations in a given market. I am pleased to inform you that LTVS has developed a local-to-local solution for DBS. LTVS has developed a business plan and the technology to distribute via satellite all over-the-air, full power, commercial and noncommercial television stations within a given station's television market, known as Nielsen's Designated Market Areas ("DMA"). LTVS will provide service to all stations in approximately the top 70 markets in the United States and reach approximately 75% of the U.S. television households. Our intent is to deliver individual local station packages to all DBS providers, who will then retail these packages to their subscribers. We are very excited about our ALL STATIONS IN A MARKET plan that will enable consumers to receive their local broadcast programming through their DBS provider. This assumes satellite parity with existing cable must carry.

MY PRIMARY PURPOSE TODAY, HOWEVER, IS TO SEEK PASSAGE OF THE LEGISLATION NECESSARY TO MAKE LOCAL-TO-LOCAL A REALITY. IN ORDER TO MOVE THE LTVS PLAN OR A SIMILAR PLAN BY ANY OTHER ENTITY FORWARD, WE NEED A COMPULSORY COPYRIGHT LICENSE FOR LOCAL-TO-LOCAL.

That is, in order for LTVS to become a reality we need legislation that would grant a compulsory copyright license to satellite carriers for the retransmission of local television signals in their DMAs subject to retransmission consent. Satellite carriers whose retransmissions are subject to the compulsory license would have to offer to carry all full-service television stations in any local market served. Satellite carriers would have to obtain retransmission consent from local stations prior to retransmitting their signals. In addition, LTVS supports legislation to require satellite carriers to comply with limitations on sports broadcasts, network nonduplication, and syndicated exclusivity, similar to cable's rules.

Last month, Representative Richard Burr (R-NC) introduced the Satellite Access to Local Stations Act (SALSA - H.R. 89), which already has over 50 co-sponsors. The Burr bill would amend the Copyright Act of 1976 to provide a statutory license, not

subject to any royalty fees, since the stations' signals are not extended beyond their present coverage area, for the retransmission of television stations into a given station's local market by satellite carriers. The legislation would enable consumers to receive via satellite all over-the-air, commercial and noncommercial television stations within a given station's local market. LTVS supports the passage of the Burr bill either as part of a comprehensive satellite bill or as a stand-alone bill.

As to the must carry issue, any legislation that would permit interim or transitional must carry until the year 2002 must explicitly provide that the full must carry requirement will be mandatory at the end of the transition period. To assure such compliance, a satellite carrier must file a report with the Federal Communications Commission ("FCC") on January 2, 2001 demonstrating that it will be in compliance in 2002. After the transition period, a reporting requirement, such as the one included in the Burr bill, should be sufficient to monitor compliance with the carriage obligations.

In addition to the passage of the necessary legislation, LTVS also needs changes at the FCC. Earlier, I mentioned that LTVS would cover approximately 70 markets. LTVS is seeking several changes in proposed FCC rules that may increase the number of markets we can serve. Briefly, the FCC's proposed rules limit the number of transponders to 420 with a corresponding limitation on the number of markets covered. Under the FCC's proposed rules, LTVS will be able to provide a maximum of 420 transponders, which limits the number of markets served. The FCC's proposed rules regarding the possible sharing of 250 MHz in the 18 GHz band and maximum operating power impose coverage limitations.

Now, I would like to turn to the specifics of our business plan. Under our ALL STATIONS IN A MARKET plan, LTVS will deliver individual local station packages to all DBS providers, who will then retail a local station package to their subscribers. The DBS industry has long recognized that the lack of local stations in their program offerings is a primary reason that consumers who consider DBS do not buy. LTVS's local station product will overcome that competitive barrier.

LTVS's goal is to become the unified platform that allows DBS as an industry to compete more effectively with cable television and other competitors in the multi-channel video programming market. Further, viewing of local stations in satellite homes is lower than in cable homes and the LTVS plan will assist in protecting local stations' economics and, in turn, service. Our business plan is aggressive in that, with the passage of the necessary legislation by the second quarter of this year, we intend to have the receivers in the stores by December 2001 and begin LTVS service in 2002. To date, in addition to having developed the technical plan for our project, which I will describe in greater detail momentarily, we have (1) shared our plan with the DBS and broadcast industries in order to confirm the need for our project and to assess their interest, (2) retained Babcock & Brown, an international investment firm with particular financing expertise in the satellite and DBS industries, (3) obtained a design for the satellites from two satellite manufacturers, and (4) fostered the introduction of the necessary legislation.

Our priority now is to obtain passage of the necessary legislation. It will take approximately 30 months to build and launch the satellites needed for the LTVS service. Therefore, if LTVS is to begin service in 2002, the necessary legislation must be passed now so that the order for the satellites can be placed. Once this is accomplished, we will enter into formal negotiations with DBS providers for the delivery of the local station packages and with local television stations for retransmission consent. I will turn now to the technology behind our plan.

In the past, one of the obstacles to DBS providing local television signals was the lack of an efficient technology. That technology is now available with spot beams. We plan to operate two satellites in the Ka-band at an orbital slot between 101° and 119°, which would provide coverage to the continental United States. Consumers will be able to receive the current high power DBS signals and the local television signals from one dish and with one receiver box containing the encoders for both DBS and the local signal service. Also, consumers will receive only one bill for both the DBS service and the local television service.

Last year, LTVS reported that it intended to carry all stations in all markets. That plan was based on the satellites' carriage of analog signals at 4 megabits (Mbps) per station. Our intention now is to carry the entire signal of a station. In other words, every station can be carried in full HDTV at 19.4 Mbps. Because these digital signals require much more bandwidth than analog signals, the two LTVS satellites will be unable to carry all stations in all markets. Nevertheless, we think this is a better plan. As mentioned earlier, the satellites will take more than two years to build and will last approximately 15 years. Thus, they must be designed for the future digital environment. LTVS will be able to accommodate the DTV/HDTV rollout as well as multiplexing which is the future of television. Also, it

would be impractical to build satellites to carry analog signals now and then be unable to efficiently modify the satellites to carry HDTV signals in the future. Further, the ability to carry digital signals will enable DBS to be competitive with cable in the future. Currently, cable operators are equipping their systems to carry digital signals. In fact, it has been reported that CBS and Time Warner have reached an agreement for Time Warner to carry all of the CBS-owned stations' full digital signals on their respective systems in those markets served by Time Warner.

As I mentioned earlier, our two Ka-band spot beam satellites will have the capacity to carry the entire signal (full HDTV) of all stations in approximately the top 70 markets. The satellites have been designed and LTVS is in a position to move forward with the satellite manufacturers to begin building the satellites as soon as the necessary legislation is passed. While LTVS has also developed a technical plan that would require another orbital location and two additional satellites for carriage of stations in smaller markets, LTVS has been unable to develop a viable economic plan. However, without timely passage of enabling legislation, neither LTVS nor any other company can provide this service.

The stations carried will be uplinked from regional uplink sites. In early April 1998, we invited vendors to respond to a Request for Proposal ("RFP") for the equipment and services needed for the uplinks, as well as receivers, dishes and master control center. These vendors were selected from those responding to our original Request for Quotations ("RFQs") issued in mid-1997. Worldwide Satellite Broadcasting, Doctor Design and several other manufacturers are assisting in the continued development of our receiver design.

Finally, from a public policy standpoint, LTVS is good for consumers, DBS providers, and broadcasters, and our plan furthers Congress' and the FCC's common goal of making DBS more competitive with cable on a nationwide basis.

LTVS provides consumers with a one stop shopping alternative to higher priced cable television. LTVS responds directly to consumers who want more choice in the multichannel video programming market, but also want their local television stations delivered in the same medium and quality in which they receive other channels. Our plan provides consumers with the convenience of receiving their DBS signals and local television signals with ONE-DISH-ONE BOX-ONE-BILL.

For DBS providers, LTVS is the long-awaited and much needed solution to their prior inability to deliver local television signals to their subscribers. LTVS will make a significant contribution to leveling the playing field by enabling DBS to offer a basic satellite service like basic cable. Our ALL STATIONS IN A MARKET plan should spur the development of the DBS industry and increase DBS competition with cable. For DBS providers, LTVS provides a convenient and seamless local solution for 75% of the U.S. television households. That's 3 out of 4 Americans served from day one. DBS providers will be able to attract new subscribers by offering a one stop shopping entertainment package including all local broadcast stations in a given market.

Broadcasters too will benefit from our plan because LTVS will enable distribution of local television stations within their DMAs. Under our plan, every full power station in the covered markets will have the opportunity to be carried because we propose to carry all local stations that consent to be carried. Local stations will continue to control the distribution of their signals. The LTVS plan should help stop the television ratings erosion in DBS homes. Finally, LTVS should help facilitate and accelerate the HDTV rollout.

The time has come for the DBS industry to take a giant leap forward in its development. The DBS industry served its first customer in 1994. Since that time, DBS has provided some competition for cable, but the lack of local television signals within the DBS programming package has placed DBS at a competitive disadvantage and stifled its growth rate. Today, more than 67.4% of U.S. television households subscribe to cable compared to only 7.9% for DBS. Indeed, market research shows that the primary obstacle for DBS in competition with cable is the lack of local television signals. LTVS solves this problem by providing DBS with the local station packages in the full 19.4 Mbps that they need to compete long term with cable. Furthermore, our plan will enable DBS subscribers to receive local originated programming such as local weather, local news, local sporting and charity events, and public affairs programming, all of which serve the public interests.

I thank you for having given me the opportunity to tell you about Local TV on Satellite and I would be pleased to answer any questions.

Mr. TAUZIN. Thank you very much, Mr. Hutchinson.

Finally, David Moskowitz, the Senior Vice President and General Counsel of EchoStar. Mr. Moskowitz.

STATEMENT OF DAVID K. MOSKOWITZ

Mr. MOSKOWITZ. Mr. Chairman and distinguished members of the committee, thank you for inviting me to testify. I am David Moskowitz, and I am the Senior Vice President and General Counsel for the DBS company based in Denver, EchoStar. We serve over 2 million customers today.

Ever since EchoStar launched its DBS business 3 years ago, we have had a single focus: to compete aggressively against cable's poor customer service and constantly increasing rates. But DBS still faces many obstacles. Most importantly, DBS needs the full statutory right to provide local channels by satellite. Consumers cite the lack of local channels as the No. 1 reason why they don't switch from cable to DBS.

EchoStar offers local channels by satellite today, but it requires two dishes. Believe me, that is a tough sell. With FCC approval of our recently announced deal to acquire additional DBS spectrum, EchoStar will launch two additional satellites this year and be better positioned to provide consumers that added ingredient, local channels, in addition to the popular cable TV programming they desire, on one dish. With this additional capacity, we will be able to provide popular local stations to nearly 50 percent of the U.S. population.

But this will only be possible with congressional action to allow efficient and comprehensive local-to-local service without the burdensome limitations such full must-carry. Put simply, if must-carry is imposed on satellite today, the number of consumers to whom we will be able to offer true choice will be significantly diminished.

Right now satellite cannot bear the cost of full must-carry compliance. Give us a chance to get off the ground as an industry. Cable had 20 years to develop before must-carry was imposed. When satellite realizes significant market share, then we could economically launch additional satellites with the capacity necessary to comply.

Today EchoStar is the only company committing its capital to local programming by satellite, and may be the only company ever to do so. Today must-carry would only serve to stifle the creation of competition.

Broadcasters have announced record profits in 1998 and have made billions over the years from the spectrum they receive from the government for free. This industry does just fine and doesn't need the protection of a satellite must-carry today.

EchoStar's failure to carry a local station would do no harm because we lack market power. We urge you not to impose must-carry on satellite in any DMA until our market penetration reaches at least 15 percent in that market.

This lack of market power compared to the leverage of cable also has us concerned that broadcasters will have no incentive to give us their signals on reasonable terms or perhaps at all. Exclusive contracts between broadcasters and cable or higher prices for satellite to obtain retrans will hurt the consumer. With the notable exception of Fox, our efforts to reach retrans agreements with the major networks and their affiliates to date have been disappointing. If we are to get off to a sound start, it is imperative that your legislation allow local-to-local with a grace period to obtain retrans

and include language that will prevent discrimination against satellite providers.

Further, for 3 years anti-competitive provisions of the SHVA have handcuffed our ability to vigorously compete. Current law requires consumers to disconnect from cable for 3 months in order to get network channels by satellite. Current law specifically entitles cable to deliver network channels to restaurants and apartment buildings while satellite typically cannot. Current law requires DBS to pay a copyright fee that is many times more than cable pays. These disparities must be eliminated.

Lower prices and better quality for consumer will result where EchoStar provides local channels by satellite. However, consumers to whom we cannot provide local channels today will still need to rely on a combination of off-air antennas and distant satellite signals for the network programming so crucial to competition.

EchoStar implemented a predictive model that complies with the FCC recommendations when it commenced providing distant network signals about a year ago. But, as the FCC has noted, current law is unfriendly to consumers, unrealistic, and denies network channels to tens of millions of customers who receive a poor off-air signal as a result of ghosting and other impediments.

Continued use of the antiquated Grade B standard developed during the 1950's, when any signal was a good signal, is especially incongruous, given the push for HDTV. Absent a change in law, many consumers will not consider satellite as a good alternative to cable. We urge Congress to direct the FCC to eliminate standards left over from the 1950's and establish guidelines that take into account the expectations of viewers today. No one should be denied access to clear network programming.

With the help of Congress, EchoStar is ready to offer American consumers full competition to cable from a single 18-inch dish this year. Please, with cable deregulation imminent, consider our request and help us give consumers real choice. Thank you. I look forward to answering your questions.

[The prepared statement of David K. Moskowitz follows:]

PREPARED STATEMENT OF DAVID K. MOSKOWITZ, SENIOR VICE PRESIDENT AND
GENERAL COUNSEL, ECHOSTAR COMMUNICATIONS

Mr. Chairman and distinguished members of this Committee, thank you for inviting me to testify before you today as you consider reform of the Satellite Home Viewer Act. My name is David K. Moskowitz, I am the Senior Vice President and General Counsel, Secretary and Director of EchoStar Communications Corporation, a Direct Broadcast Satellite (DBS) company based in Littleton, Colorado. EchoStar was started in 1980 as a manufacturer and distributor of C-band dishes that grew by the mid-1980's into the largest supplier of C-band dishes worldwide. EchoStar's founder and Chief Executive Officer Charlie Ergen had a vision of a dish in every home, school and business in the United States and of providing true, effective competition to cable. That vision could not be realized with large dishes. Consequently, in 1987 EchoStar applied for a DBS permit with the Federal Communications Commission (FCC). The FCC granted EchoStar its first DBS spectrum assignments in 1992. Since then, EchoStar has launched four DBS satellites and has invested over \$2 billion in satellite television technology, working to give consumers a true alternative to cable.

EchoStar was the first DBS company to drop the price of a dish to below \$200 when the competition was charging \$800 for its product. EchoStar was the first to allow subscribers to pay a low monthly fee as they do with cable. EchoStar was the first to allow consumers to choose the 10 channels they watch the most, then pay for those "a la carte" without having to buy an entire package of programming they

do not want. EchoStar was also the first company to guarantee it will not raise prices until the next millennium. These are just some of the measures our company has taken to compete vigorously in the marketplace and make satellite technology affordable and accessible for all Americans.

In trying to compete against cable television, EchoStar soon realized that the most significant handicap hampering satellite service is the lack of local signals. Most of the consumers walking out of the store without a satellite dish cite the unavailability of local signals (which they can receive from cable) as the reason. As I will detail below, EchoStar has started providing limited "local-into-local" service in an effort to alleviate that handicap. That effort, however, is hindered by (a) spectrum constraints and (b) the Satellite Home Viewer Act, at least as read by some parties. EchoStar is working to overcome the first of these impediments, principally with the MCI/News Corp. transaction that I will briefly describe. We will need your help, and that of your colleagues on the Judiciary Committee, to overcome the second.

In December 1998, EchoStar announced its intention to acquire from MCI/Worldcom and News Corp. an FCC authorization to use 28 frequencies at the 110° West Longitude orbital location that can serve the entire continental United States, or "full-CONUS." EchoStar also intends to acquire two satellites to be launched in 1999 and an uplink center located in Gilbert, Arizona, which will provide back up capabilities to our existing uplink facility in Cheyenne, Wyoming. In turn, EchoStar will give the two companies non-controlling equity stakes in EchoStar.

The spectrum at the 110° W.L. slot, combined with EchoStar's existing full-CONUS spectrum at 119° W.L. (21 frequencies) as well as the half-CONUS locations at 61.5° W.L. (11 frequencies) and at 148° W.L. (24 frequencies) will alleviate the capacity handicap that currently hampers EchoStar, helping us to compete more vigorously against cable. While the transaction is necessary to introduce more competition into the subscription video marketplace, it is not enough. Action by this Committee and others in Congress is key to our ability to provide American consumers a true alternative to the ever increasing prices and poor customer service of cable companies.

REFORM THE SATELLITE HOME VIEWER ACT.

We need reform of the Satellite Home Viewer Act to give DBS the unambiguous copyright license to retransmit local signals back into local cities. In areas where off-air network signals are not available, or where spectrum/capacity constraints inhibit DBS providers from re-transmitting local signals, Congress needs to define realistically who can and cannot receive distant network signals from the DBS provider. The law does not provide for either of these pro-competitive conditions today and, in fact, provisions of the SHVA as it exists today are clearly *anti-competitive*.

DBS cannot fully compete as an industry against cable when the law says customers must wait until 90 days after disconnecting from cable before our service can turn on their network signals. DBS cannot effectively compete as an industry when the law says our signals may only be received in a private home and not at commercial establishments. DBS cannot compete as an industry when it must pay several times more than cable companies in copyright fees for access to distant network signals. And DBS certainly cannot compete when it must conduct burdensome and prohibitively expensive tests to determine whether a viewer receives an off-air broadcast signal.

The legislation proposed by Rep. Howard Coble is a terrific first step in the effort to reform the Act, and we applaud the work he and his staff have done to help our industry. We encourage you to work closely with Chairman Coble as this committee works through the tough issues that will be involved with transforming this bill into law.

ECHOSTAR'S LOCAL INTO LOCAL PLAN

We believe EchoStar can finally offer a breakthrough in what has been the single greatest obstacle for consumers when deciding whether to choose DBS over cable or whether to switch from cable to DBS. EchoStar is planning to offer consumers a digital local-into-local service, on a single dish solution, to nearly 50% of the U.S. population, while at the same time overcoming the challenges in offering interactive television, Internet solutions, and High Definition Television ("HDTV").

Currently, EchoStar offers limited local-into-local service in 13 markets. The local service we offer, even if we could make it available to all subscribers, is not perfect. It is tough to sell because it requires customers to install a second dish on their roofs. With the new orbital location at 110°, consumers in 20 major metropolitan cities would receive local programming using one dish while consumers in many

smaller markets, who are currently unserved with local signals, will be offered a two-dish solution for local channels by satellite.

Independent studies and our many years of experience as a satellite TV company match the conclusions of the FCC: most people who walk into a satellite dealer's showroom turn around and walk out because they can't get their local TV channels through DBS.¹ Surveys show that viewers watch their local channels 70 percent of the time.

In 1998, EchoStar began offering satellite-delivered local network stations to qualified consumers in the Washington, D.C., New York, Atlanta, Dallas, Boston, Chicago, Los Angeles, San Francisco, Phoenix, Salt Lake City, Denver, Miami, and Pittsburgh markets. With the additional spectrum at 110° W.L. and the two new satellites to be launched in 1999, EchoStar plans to expand its local channels service to Sacramento, Portland, Seattle, Las Vegas, St. Louis, Minneapolis, and San Diego, as well as offer local-to-local service in Alaska and Hawaii. In each of these markets we offer the four most popular network TV stations, and in some cities we offer highly-demanded independent TV stations as well. We strongly believe the resources and money EchoStar has devoted to providing Americans news, sports and weather from their local stations will best serve the public interest; our plans offer for the first time to many consumers in those markets a true choice between satellite television and cable. But without your help in reforming the Satellite Home Viewer Act, American viewers will continue to have little choice from the monopolies of cable.

There have been some, outside the DBS industry, who have proposed "solutions" purporting to give DBS the ability to carry local signals into the local market. These proposals, however, are inadequate on their face.

Northpoint Technology (Northpoint) seeks to use the 12.2-12.7 GHz band for a point-to-multipoint terrestrial system that would, among other things, deliver local signals to DBS customers and compete in the MVPD market. However, EchoStar does not believe that Northpoint would offer an attractive local-into-local complement to satellite services, primarily because consumers find the combination of a satellite dish and a terrestrial off-air antenna cumbersome. Furthermore, all DBS operators have serious concerns that use of the same band for a different service could cause harmful interference for DBS services now enjoyed by more than 10 million subscribers. When the FCC allocated this band for use by DBS companies, it relocated terrestrial services because of the high-power, ubiquitous nature of DBS. While EchoStar welcomes competition from all sources, the first and fundamental rule that should be observed to promote effective competition to cable is "first, do no harm." The FCC should not consider allocating the DBS spectrum to another terrestrial service if it risks compromising the reliability and quality that makes DBS so competitive.

EchoStar also strongly believes that the FCC should not allocate DBS spectrum to a terrestrial wireless provider in an attempt to establish competition to cable. The FCC has already set aside spectrum for ubiquitous or high-density terrestrial services such as Northpoint's and has licensed Multichannel Multipoint Distribution Service providers. In 1998, the Commission also auctioned broadband terrestrial spectrum for Local Multipoint Distribution Services, which could be used to compete in the MVPD market if such use proves viable. But because wireless cable in other bands has not proven to be a viable alternative to cable thus far, it would be inappropriate for the FCC to allocate DBS spectrum for yet another wireless cable solution and endanger the integrity of DBS, the only service that has proven a viable alternative to cable.

Capital Broadcasting—a coalition of broadcasters—has proposed a plan that would make its service available to DBS providers in about 67 markets nationwide. Unfortunately, that plan is four to five years away and is technologically speculative. Capital has not even begun construction of its satellite system. The system would use very high frequencies—the Ka band—which experience signal attenuation and rain fade problems. The technology for using these frequencies has yet to be implemented commercially—let alone for the purpose of direct-to-home video. The FCC requires satellites using the Ka band spectrum to be positioned very close to one another, necessitating larger dishes. In fact, the permissible size of the dish using Ka band satellites is still unknown. The integration of such an offering with the current DBS services, which use different spectrum, conditional access, and digital transport standards, may also be problematic.

¹ See *Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, FCC 98-355 (rel. Dec. 23, 1998) at ¶63 n.274. See also *Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, 13 FCC Red. 1034, 1072 n.201 (1998).

MUST-CARRY IS INAPPROPRIATE AT THIS POINT BECAUSE SATELLITE CARRIERS LACK
MARKET POWER

While the additional spectrum we intend to acquire at the 110° W.L. orbital slot will allow us to serve many more markets, this will not be possible if DBS distributors were to become subject to unreasonable, and probably unconstitutional, must-carry obligations. EchoStar believes it would be inappropriate for Congress to impose a must-carry requirement on satellite carriers at this point. The main reason why Congress imposed must-carry provisions on cable operators, and why the courts found it constitutional, was due to the bottleneck characteristics inherent in cable systems. Satellite carriers in general, and EchoStar in particular, lack that characteristic. Indeed, it was only when cable operators indisputably gained real bottleneck power in the early 1990s that Congress imposed must-carry rules and the Supreme Court, after careful review, upheld them.

Specifically, in enacting the 1992 Cable Competition Act, Congress found that:²

- Cable operators had considerable and growing market power over local video programming markets.
- Cable served at least 60% of American households in 1992 and evidence indicated cable market penetration was projected to grow beyond 70%.
- Cable operators possess a local monopoly over cable households, with only 1% of communities served by more than one cable system.
- “Cable operators thus exercise control over most (if not all) of the television programming that is channeled into the subscriber’s home . . . (and) can thus silence the voice of competing speakers with a flick of the switch.”
- “The structure of the cable industry would give cable operators increasing ability and incentive to drop local broadcast stations from their systems, or reposition them to a less viewed channel.”
- “Horizontal concentration was increasing as a small number of multiple system operators (MSOs) acquired large numbers of cable systems nationwide.” In 1992, the 10 largest MSOs served almost 54% of all cable subscribers compared to less than 42% in 1989. By 1994, the 10 largest MSOs controlled 63% of the cable systems, a figure projected to rise to 85% by 1996.
- “Vertical integration in the industry was also increasing.” In 1984, cable operators had equity interests in 38% of cable programming networks. In the late 1980s, 64% of new cable programmers were held in vertical ownership.
- “Cable systems would have incentives to drop local broadcasters in favor of other programmers less likely to compete with them for audience and advertisers.” As the Court explained, “Independent local broadcasters tend to be the closest substitutes for cable programs, because their programming tends to be similar, and because both primarily target the same type of advertiser: those interested in cheaper (and more frequent) ad spots than are typically available on network affiliates.”
- Cable carriage greatly increases the ability of broadcast stations to compete for advertising, which substantially increases viewership.
- “Cable has little interest in assisting, through carriage, a competing medium of communication.”
- Significant numbers of broadcasters had already been dropped and a substantial percentage of independent stations were not carried.
- In parallel with clustering, cable systems were looking increasingly to advertising, especially local advertising, for revenue.
- Stations that are dropped or denied carriage would be at “serious risk of financial difficulty.”

On the basis of this evidence, the Supreme Court found that “it was more than a theoretical possibility in 1992 that cable operators would take actions adverse to local broadcasters.”³ A majority of the Court accepted that cable’s bottleneck power represented a sufficient enough threat to the broadcasting system to justify an important government interest in the promulgation of must-carry rules.

Cable wasn’t always such a behemoth. Like DBS, cable was once a fledgling technology and Congress, recognizing this, took a series of actions to help it grow.

In fact, the history of cable television can easily be characterized as one of special favors from the Federal Government, allowing cable to compete against the monopolies of earlier eras. Back when broadcast television and telephone companies occupied the monopoly positions that the cable industry occupies today, cable regularly went to the government looking for help that would enable it to compete. As Rep.

² See *Turner Broadcasting System, Inc. v. FCC*, 117 S.Ct. 1174, 1190-96 (1997) (*Turner II*).

³ *Turner II*, 117 S.Ct. at 1192.

Edward Markey, ranking member of the House Commerce Subcommittee on Telecommunications, Trade and Consumer Protection, said in a recent hearing:

“What we’ve done . . . over the years, is we’ve said, to industries, to the cable industries, tell you what, we’ll give you access to every television station for free, in the 1970’s. We’ll give you access to every telephone pole or electric pole in America, because we don’t want you to have to build your own poles. Now, that’s not perfect, but it gets you in the game.”⁴

More specifically:

- When cable was in its infancy, broadcasters tried to subject cable to common carrier regulation, arguing that cable’s growth threatened them. The FCC, at cable’s request, refused. Indeed, the FCC put a “heavy burden” on broadcasters who claimed economic injury from cable systems.
- At the same time, broadcasters did not want to allow cable systems to retransmit their signals without permission. The cable industry fought against such a so-called “consent” requirement. In 1959, Congress sided with the infant cable industry, refusing to adopt a consent requirement for retransmission of local broadcast signals. Eventually, in *Fortnightly Corp. v. United Artists Television, Inc.*, the Supreme Court held that cable systems did not have to obtain consent of the copyright holder or pay royalties to retransmit copyrighted material on distant television signals. Congress left this decision unchanged until 1976. With the 1976 Act, Congress gave cable operators a broad compulsory license to retransmit broadcast signals.
- In the 1960s and 1970s, local telephone companies refused to allow cable operators access to utility poles, utility ducts, and conduits, effectively preventing some operators from reaching their customers. Again, the cable industry looked to the government to step in, and Congress in 1979 enacted the Federal Pole Attachment Act in order to prevent telephone companies and other utilities from charging unreasonable rates for the attachment of cable television equipment to poles, ducts, conduits, and rights-of-way.
- Not many years later, Congress, at the request of the cable industry, enacted the Federal Cable Act of 1984, allowing state and municipal governments to grant cable operators exclusive franchises (which were prohibited only in 1992). That same 1984 Act granted cable operators the right to use easements or rights-of-way dedicated for electric, gas, telephone, or other such utility transmission—rendering unenforceable private arrangements which seek to restrict a cable system’s use of such easements or rights-of-way. Indeed, the 1984 Act introduced vast deregulation of the cable industry. Congress re-regulated cable only in 1992, when its market power had become too formidable and the abuse of that power had become too blatant to ignore.

EchoStar is not asking for government favors like those that cable operators secured so many times. At the same time, it is simply inappropriate to saddle EchoStar with must-carry obligations that were imposed on cable operators only after (and because) they had amassed so much monopoly power. Further, we believe any reform of SHVA you consider in conjunction with the House Judiciary Committee should allow DBS to offer local stations without having to carry all of the stations in a given market until the DBS industry has some level of market penetration.

FAIR RETRANSMISSION CONSENT AGREEMENTS ARE ESSENTIAL

Accompanying local signal carriage should be the ability for DBS providers to get retransmission consent agreements with broadcasters under the same terms broadcasters give to cable. Our hope is that when we unequivocally win the full-fledged right to provide local stations to local markets, the TV stations we seek to carry in each of these markets will give us retransmission consent agreements to the extent required. Since EchoStar launched its DISH Network service in 1996, we have been seeking those agreements with broadcasters nationwide. We believe the broadcaster has, to the extent required, the right to control its own signal, but our lack of market power as an industry and as a company gives broadcasters no incentives to offer us fair terms. Conversely, the cable industry’s market power translates into great leverage over whether the broadcasters deal with us enthusiastically or not. In seeking agreements with the broadcasters, we have had numerous executives tell us that they would be willing to give us agreements, but they have declined because they fear angering the cable companies they deal with. We urge you to make sure there

⁴Video Competition: Multichannel Programming: Hearings Before the House Subcommittee on Telecommunications, Trade and Consumer Protection of the Committee on Commerce (Apr. 1, 1998) (Remarks of Rep. Markey).

are provisions, in any legislation passed, that will ensure that DBS is able to get retransmission agreements from broadcasters on terms that are comparable to those enjoyed by cable operators—terms that are fair and equitable.

DISTANT NETWORK SIGNALS

This Committee's decision concerning the retransmission of distant network signals to households that cannot get truly adequate network signals is as important to EchoStar as the decision concerning local-into-local retransmission. It is important to distinguish between retransmission of local signals from distant signals.

Retransmission of local signals does not threaten the network affiliate relationship, which the "unserved households" restriction was intended to protect. The signal being retransmitted by satellite is the local network signal, not that of another affiliate of the same network. For that reason, EchoStar believes that local-into-local retransmissions are within the scope of the current copyright license, although legislation is still necessary to confirm this.

With respect to distant signals, EchoStar acknowledges that retransmission of a distant signal where a local signal is truly available would compromise the network-affiliate relationship. We recognize the legitimate concerns of the broadcasters and we are not requesting that such retransmissions be permitted. On the other hand, the consumers' interests are paramount for this Committee and for EchoStar, and it is important for all of us to work to ensure that each and every consumer without an adequate network signal has access to a distant network signal by satellite. In its recent *Grade B Order*,⁵ the FCC made several decisions in connection with the definition of "Grade B intensity." While the FCC's actions were well intentioned, they also highlight the need for congressional action to clarify when a household can receive distant network service by satellite.

The FCC found, *first*, that it has no authority to adopt a higher value for Grade B intensity, corresponding to modern consumer acceptance standards, specifically for SHVA purposes. *Second*, it adopted a methodology for measuring television signal intensity at individual households. However, several aspects of that methodology, including the need to re-orient the test antennas to each and every station and make several measurements at different locations after each re-orientation, make it cumbersome and expensive, and thus a non-viable solution for testing at millions of households. *Third*, the FCC endorsed the so-called "Individual Location Longley-Rice" (ILLR) model for predicting whether or not individual households can receive signals of Grade B intensity. While this method is an improvement over the one used by the broadcasters in the Miami litigation, it still penalizes consumers who can only receive a strong signal with 50% confidence. Finally, the FCC identified several options for improving the SHVA and the Communications Act to better serve customers, including the following: confirming that copyright law allows satellite companies to provide local television stations to local markets; finding a "better, but still objective, standard" for determining which households are "unserved;" repealing the 90-day waiting period for former cable customers; and providing for a "clear statutory acceptance" of predictive models and loser-pays mechanisms.

We join with the rest of the industry in urging you to reform SHVA so that the law gives the FCC the authority to set a signal reception standard that ensures, with a high degree of probability, that the signal can be received in the home at the television set.

CONCLUSION

DBS as an industry has to be able to say to potential subscribers, as we have in one of our most recent advertising campaigns: "dump cable—we can give you what they can give you." We are asking you and your colleagues in the Senate to reform the Satellite Home Viewer Act so that it ultimately lets the consumer decide whether we have a product that competes. We think our product will compete more vigorously if placed on a more equal footing. Reform the law so that DBS can retransmit local programming without having to bear the burden of must-carry until the DBS industry can become a more vigorous competitor to cable. And finally, we ask that you encourage the FCC to develop a realistic method for predicting who is eligible to receive broadcast signals and for measuring signal strength.

If you take action now, you will help the Direct Broadcast Satellite industry fulfill the promise made by Congress to the American people when Congress signed into

⁵*Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act*, FCC 99-14 (rel. Feb. 2, 1999) (*Grade B Order*).

law the Telecommunications Act of 1996. The promise was for effective and uninhibited competition. That is what consumers want and they should not have to wait.

Mr. TAUZIN. Thank you very much, Mr. Moskowitz.

The Chair himself for a round of questions, and we will try to quickly and carefully limit everyone, including myself, to 5 minutes, so we can get through. If we have time, we will try to do a second round, if anybody wants any further questions.

Let me start by asking Mr. Perry, using your technology and assuming that the FCC would implement its new predictive model, how many of the viewers who are going to be cutoff this weekend would not have to be cut off?

Mr. PERRY. Approximately 10 percent.

Mr. TAUZIN. How many households is that?

Mr. PERRY. There are 744,000 scheduled to be disconnected. So 75,000.

Mr. TAUZIN. Seventy-five thousand households would not have to be disconnected. And of the 2.2 million households eventually affected by the order, would that number still be about 10 percent?

Mr. PERRY. It should hold true, yes.

Mr. TAUZIN. So we are talking about over 220,000 households might not have to get disconnected, right?

Mr. PERRY. That is correct.

Mr. TAUZIN. Let me turn to you, Mr. Fisher. I understand that Direct TV has said that they intend to requalify of all Primetime 24 subscribers. Using the FCC's new predictive model, if those 220,000 citizens who would be entitled to receive the long-distance network signal would not have to be disconnected, why cannot you and the satellite industry go to court and voluntarily ask for a delay in time to let this happen, so that, instead of disconnecting these people and reconnecting them later, we can have an orderly process of this matter?

Mr. FISHER. Mr. Chairman, to the best of my knowledge, of the 70,000 that Mr. Perry has just referred to, overwhelmingly they are in fact receiving the authorizations; they are receiving the waivers. The crisis does not exist, sir.

Mr. TAUZIN. Mr. Hewitt, you had showed us some picture indicating a satellite consumer who was going to get cutoff. I don't know if you dispute whether that citizen is going to get cutoff or not, but, Mr. Fisher, having looked at that, would you agree that that person ought not get cutoff of a satellite signal?

Mr. FISHER. If that is the signal that results from a conventional rooftop antenna that is properly aimed, clearly, that person should not be cut off. I would only say that, when the satellite industry brought tape after tape to Federal court and we went back to those same locations in place after place, wonderful Grade B signals were visible.

Mr. TAUZIN. Well, again, if there is a process underway whereby the 220,000 subscribers who are not supposed to get cut off are not going to get cut off, that is one thing. But if those folks, or a goodly number of them, are not going to get cut off and have to be reconnected, it seems to me that some agreement to—what is it going to hurt to allow some time for the new FCC predictive model to be implemented, then for these citizens to be legally qualified, rather

than waived or anything else, to get the network signals over their satellites?

Mr. FISHER. Mr. Chairman, I don't believe there is any reason that people in the white areas should be cut off at the end of February. And I believe our industry is working very hard to assure that is the case.

Mr. TAUZIN. But the concern is, obviously, for those citizens who will be cut off, nevertheless, and who under the new predictive model would not necessarily have to be cut off, and you are telling me that is not going to happen. And I am hearing from an awful lot of people that it is going to happen.

Mr. FISHER. Mr. Chairman, I appreciate that, and I know the noise level on this has been extremely high. We have called upon Decisionmark to, as rapidly as possible, use the FCC suggestions. And I can only tell you that our industry believes in the most fervent way that we are, in fact, providing those waivers to everyone who is qualified under the newest interpretation of the FCC regulations.

Mr. TAUZIN. How many waivers have been allowed so far?

Mr. FISHER. I believe it is in the tens of thousands, sir.

Mr. TAUZIN. How many? Twenty thousand, 30,000?

Mr. FISHER. We let 3,000 go in Seattle ourselves.

Mr. TAUZIN. Well, you are up to 75,000, because that is the number that is going to cutoff this weekend, absent the implementation of the FCC's new predictive model.

Mr. PERRY. As of last night at midnight, 67,000 individuals had requested waivers on their own.

Mr. TAUZIN. And how many have been granted?

Mr. PERRY. Approximately 37 percent.

Mr. TAUZIN. Thirty-seven percent of the 60,000?

Mr. PERRY. Yes.

Mr. TAUZIN. So we are talking about a considerably smaller number than the 75,000 who should be qualified under the new FCC predictive model to receive the signal.

Mr. PERRY. We are running in parallel here. We have the customers who come in through our GETAWAIVER.COM website, and then we have the process whereby we are requesting waivers on behalf of the NAB for CBS and FOX, and that number is very different than the GETAWAIVER.COM site.

Mr. FISHER. Mr. Chairman, can I add a note, because it is a little confusing? There are two systems simultaneously. There are people who are cognizant that they need to request a waiver. Mr. Perry has just explained the rate of waiver production in there. At the same time, our industry is proactively going forward to try to find the people who have not requested waivers, but we know should get them.

Mr. TAUZIN. But you are talking about nationwide, and not necessarily those subject to the injunction, too. The numbers are awfully fuzzy here. All I am saying and all I am asking is that, before the Congress has to leap into the breach with the moratorium, which we are going to do if we have to, it seems to me that the parties going to court and asking for a brief time to let the new FCC model be operative would be a wise course of action. And I will leave you with that thought.

I yield to my friend, Mr. Markey, for a round of questions.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

It is an interesting dilemma that we have because we all know that the largest percentage of the people we are talking about who are going to be affected are middle and upper middle-class people who in no way are affected by buying because they are going to get a lower price from satellite than they are going to get from cable. It is not in any way affecting cable rights that we can identify in the country.

We also know that a lot of these people like to pick up the New York City news or the Chicago news when they are at home because it is part of a mobile upper middle-class group of people as well. So they are not as closely tied to the local community. They don't have the attachment to it.

So that is kind of a countervailing consideration here, too, because we do create this disconnect to the local community, the people we get into this era without a solution to the local-to-local issue, because, clearly, you have got a problem which doesn't affect ordinary consumers. It is affecting a very special slice of consumers that advertisers are targeting. This is the special little group of people with money in their pockets in the above-average income groups that people market Oldsmobiles to and market these products that clearly fuel a lot of the local news and public interest programming on local television stations. I mean, that is the bottom line on this. I am not getting any calls from blue collar or poor people about this issue. We all know who is calling in. So it is an interesting set of issues.

What I would like to ask you, Ms. Collier, if I could, I understand that your service, which brings in local TV stations, can help consumers get a more comparable service to what cable offers. But what will your service cost and how soon will it be running?

Ms. COLLIER. Our service will compete head-to-head with cable television and will compete primarily on price and quality. It will be a digital service. I understand digital television here in the District is \$80. Our intention is to sell our service for around \$17.95 for a comparable service.

Mr. MARKEY. And when can you do that?

Ms. COLLIER. And we can begin selling this service after we are authorized and licensed within 6 months in 10 of the top 30 markets, identifying those that have the least amount of competition, and then on a nationwide basis within 2 years.

Mr. MARKEY. How long does the FCC tell you that it will take in order to get this process completed?

Ms. COLLIER. They haven't given us an indication.

Mr. MARKEY. How long will it take, Ms. Lathen?

Ms. LATHEN. As I understand it, the applications are currently pending before the Wireless and International Bureaus, and I can't speak on behalf of the Wireless or International Bureau, but I understand that they are going to be looked at this summer.

Mr. MARKEY. Yes, well, clearly, we need to integrate this process. If the solution is in one bureau and the problem is in another, we have to have some way of bringing together the various bureaus.

Ms. LATHEN. Can I correct that? I have someone here from engineering who could speak more specifically to that, if you like.

Mr. MARKEY. On the timing?

Ms. LATHEN. Yes.

Mr. MARKEY. Okay, yes, quickly, please.

Mr. FRANCA. Deborah was quite correct in that this is related to another proceeding. There are competing parties that also want to use the DBS spectrum for——

Mr. MARKEY. Would you get in closer, please?

Mr. FRANCA. They want to use the same spectrum that Northpoint is suggesting to use for other purposes, and the Commission is going to have to address and make a decision on which of these competing uses is most appropriate. So we will be addressing that in this summer, and then after that we can address the——

Mr. MARKEY. Does that mean you have to auction or do you have another way of dealing with it?

Mr. FRANCA. Well, Northpoint is suggesting that its operations would be secondary to the DBS operations. So I think that gives us some flexibility on whether or not we have to auction for this particular service.

Mr. MARKEY. Okay, thank you.

Mr. TAUZIN. Before you leave, would you identify yourself for the record?

Mr. FRANCA. My name is Bruce Franca. That is F-R-A-N-C-A. I'm Deputy Chief of the Office of Engineering and Technology.

Mr. TAUZIN. Thank you.

Mr. Markey?

Mr. MARKEY. If I may, obviously, when we passed this law originally, it was to deal with people who live in Mr. Boucher's district. That was why we passed it.

Ten years later, you have the 18-dish satellite with people in my district who have purchased them, and they are well within the Grade B, and that is where it gets complicated, because it is moving over into my territory and my constituents. I am trying to weigh—well, in Massachusetts, you know, we have a—anyway, it becomes more of an urban and suburban issue as you move to the 18-inch dish. We have to weigh the equities under these local TV stations.

Mr. Kimmelman, obviously, from a consumer perspective, we are in dire need of more effective competitors to incumbent cable operators. Do you believe that the FCC should explore the possibility of competition from terrestrial wireless technologies such as Northpoint?

Mr. KIMMELMAN. I think the FCC should move very quickly to explore that possibility.

Mr. MARKEY. On an expedited basis?

Mr. KIMMELMAN. Absolutely. We have a problem here of competing competitors who are about to knock each other out before they ever get in the ring. There is a claim of—multiple claims for use of a spectrum. I think we need very quick regulatory action, and I hope also reinforced by the Congress because we haven't gotten the competition.

Mr. MARKEY. And, yes or no, do you believe that the committee should look at inside wiring problems in multiple dwelling units and apartments that cable competitors are encountering?

Mr. KIMMELMAN. As I said, I think we should get away from the business of balancing interests here. We should go single-mindedly toward competition. I think everyone should have access to the wires out there. Everyone should have access to the spectrum who wants to compete in a fair manner, and phase in other obligations like must-carry, so that we get more competition faster.

Mr. MARKEY. Ruthless Darwinian, Adam Smith competition?

Mr. KIMMELMAN. Absolutely.

Mr. MARKEY. I am with you, Mr. Kimmelman. I just say, take off the gloves and let them go at it.

Thank you.

Mr. TAUZIN. Thank you, Mr. Markey.

Just for the committee's purposes, let me tell you that at a meeting with the chairman this morning it was agreed that we will sometime this year hold hearings, hopefully very soon, on the question of inside wiring and competition for multi-family dwellings, as well as multi-commercial tenant buildings. There are some heavy issues of competing legal systems there that we are going to need to discuss at that hearing.

The Chair is pleased to recognize Mr. Cox for a round of questions.

Mr. COX. Thank you.

I would like to ask Mr. Moskowitz to expand on his point that must-carry—and address that specifically; you also mentioned retransmission consent—would be a burden and an impediment to your expansion. You are only serving 2 million people right now nationally. Tell me, for example, in the context of Los Angeles, where, according to your written testimony, you are providing Fox, ABC, CBS, and NBC, and I take it nothing else of local programming or—

Mr. MOSKOWITZ. No, we actually provide KTLA as well.

Mr. COX. And KTLA?

Mr. MOSKOWITZ. Yes.

Mr. COX. Tell me what kind of burdens you are seeking to avoid, using that example?

Mr. MOSKOWITZ. Well, I guess probably the easiest way to explain it is that, for every five additional signals that we have to carry as a result of a must-carry in a particular city—and L.A. is a good example because it has got probably five more stations which we would be obligated to carry as a result of must-carry. For every five additional we have to carry, that is one less city that we can provide local channels to. So if we have to comply with a must-carry in Los Angeles, it means that we probably have to take Salt Lake City or Phoenix, or one of the second-tier, not top 10, cities off of our service until such time as compression increases and we can put more channels on per transponder or the market tells us that our idea is right, and Wall Street will be willing to finance the construction of spot-beam satellites, which all the re-use of the beams.

Mr. COX. And if I were an EchoStar subscriber in Los Angeles and must-carry were imposed, what would I be getting, in addition to Fox and CBS and NBC and ABC and KTLA—and did you say PBS, also?

Mr. MOSKOWITZ. We do not have the PBS from L.A., but, of course, PBS has applied to do a national feed to supply it there.

Mr. COX. What would be the half dozen other things that you would add?

Mr. MOSKOWITZ. There would be——

Mr. COX. It may not be a fair question. You may not know off the top of your head.

Mr. MOSKOWITZ. No, it is a fair question. I believe I can answer it.

Certainly, there would be a PAXNET channel, but we already have a national agreement with PAXNET that they are going to provide us a national feed, and not going to ask us to carry the local feed in every community. There would be a UPN and a WB, but we certainly carry a UPN and WB today. There would be a Home Shopping Channel that has no local content, and a number of other services that have absolutely no local content to Los Angeles, but which we would be required to carry and which we already carry on a national basis.

Mr. COX. You already Una Vision in L.A.?

Mr. MOSKOWITZ. I am sorry?

Mr. COX. Una Vision, do you have that on your L.A. system.

Mr. MOSKOWITZ. We have asked to carry Una Vision in L.A., and Una Vision has asked us to carry a national signal instead. We probably—I believe, actually, we already carry their national signal.

Mr. COX. And would a must-carry requirement impact that?

Mr. MOSKOWITZ. It is unclear. It depends on how the law was structured. Certainly we have reached agreement with Una Vision about whether we should or should not. We wanted to carry Una Vision, Los Angeles, because it has a wide market share. They did not want us to do so.

Mr. COX. It looks like I have a moment remaining for perhaps an additional question. Ms. Collier, you stated in your testimony that there ought not to be any interference from your use of the same bandwidth that is being used for other purposes. Do you want to expand perhaps technically on that?

Ms. COLLIER. We intend to operate as a second basis to DBS. So we wanted to prove that we do not have interference and prove that, on an actual demonstrated basis, it is certainly reasonable for people to have a concern about interference, but there has to be actual interference for it actually to be a problem. So that has been the focus of our testing work for the last 2½ years.

In our most recent report, which I show here, we did a very, very comprehensive test with the participation of both USSB and Direct TV in our work, and we operated our hotline and we tested many, many different sites. We show that there was not interference to the system through the DBS customers. We tested the EchoStar customers also. Even though they weren't present, we tested those customers also.

So we showed that we didn't have interference. The reason that we don't have interference is we used the exact same principles to share spectrum that satellites share spectrum today. The EchoStar and Direct TV today use the very same spectrum as one another. We use that same principle to share spectrum on the ground.

Mr. COX. Thank you. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Cox. The gentleman from Virginia, Mr. Boucher, is recognized.

Mr. BOUCHER. Thank you very much, Mr. Chairman.

Let me pick up on the question that my friend from California was just asking concerning the use of the DBS spectrum by Northpoint in order to offer a competing service. Mr. Hewitt, do you have any concerns about the potential for interference with the DBS signal if that spectrum is used by other providers?

Mr. HEWITT. Congressman Boucher, we are very, very concerned about the interference issue that could occur. We would embrace the Northpoint proposal should they use a different spectrum than DBS. Engineers from Direct TV, EchoStar, and USSB have all indicated to us that it is not really possible in a consumer environment to coordinate the signals, both in a transmit and receive area.

The consumers place their dishes all over—rooftops, the ground, and on patios. Reflections of the signal off buildings and other things will cause interference. The FCC has just cleared out the DBS spectrum in order for us to compete. We are now competing, and we believe very strongly that this is a high-risk thing to cause the jeopardy of existing consumers and the future consumers of DBS.

Mr. BOUCHER. I trust you have made those views known to the FCC in the proceeding that is underway there?

Mr. HEWITT. I believe we have, yes.

Mr. BOUCHER. If you haven't, I would suggest you do.

I have a question for our friends from Raleigh, North Carolina about local-to-local. My district is quite rural. We have smaller television markets in my district, but we are just as anxious for the local-to-local service to arrive for us as I am sure many viewers in the cities are.

I was given some confidence that we would get that service quickly, when last year Mr. Goodman from your company was indicating at that time an intention to uplink and then spot-beam down into the market of origination all 2,000 local broadcast stations across the United States—in essence, serving all of the 211 television markets in the Nation. Is that your business plan today?

Mr. HUTCHINSON. Two things have changed since last year.

Mr. BOUCHER. I was afraid of that.

Mr. HUTCHINSON. One is that the digital standard is now known, and we have better projections of how fast it is going to be upon us. I think one of the most telling events recently has been the announcement by the CBS television network and Time-Warner Cable that the cable system will carry on the CBS-owned and -operated stations the full high-definition digital signal. And other cable systems, digital cable, are sure to follow.

So if we are unable to offer it at a digital standard, even though it takes more spectrum, then we cannot make DBS truly competitive with digital cable, not long-term. We might have a 3- or 4-year business, but certainly not a 15-year business, the life of these satellites.

Mr. BOUCHER. So how many markets do you intend to serve?

Mr. HUTCHINSON. Our current projections with the current frequencies that we know we have are somewhere on the order of

about 68 markets, chosen based on where the most people were. How do we serve the most Americans?

Now we started out with a sincere concern for all of the markets, as you know. That was the goal. We would be very willing to share the technical plan with any entity that felt they could build that out. It is really an economic problem. It has been suggested, for example, that we might want to use a model from the rural co-ops. Perhaps there is a way to look at this more creatively financially and extend it.

Additionally, we have been to the FCC and asked for some special consideration on an additional mid-band of 250 megahertz, that if we could use those signals, those frequencies that aren't being used, we could extend the markets farther right now.

We also recognize that, with digital compression in the future, we may very well be able to use what we have to extend out, but we don't want to overpromise today beyond what we know we can deliver.

Mr. BOUCHER. Well, that is a thorough answer. I am disappointed in the result, but I appreciate the specificity with which you announced it.

Let me just ask one additional technical question of you, and then I have a question of Mr. Fisher. I was interested in what I have understood your statement to be concerning the ability of the subscribers of both EchoStar and Direct TV to have access to your local-to-local service without having to buy a second dish. Did I understand you correctly, and is that, in fact, the situation?

Mr. HUTCHINSON. That is correct, in that we propose a uniform, unified platform that is in the same arc as both of them, so that a single dish can see both. We are proposing that we put our KA encoder chip in each of their boxes, that we cooperate on that, and that the single dish bring in both.

Mr. BOUCHER. Mr. Chairman, with your indulgence, I do have one question for Mr. Fisher, and it is very much in pursuit of the line of inquiry that you announced earlier.

Mr. Fisher, we heard from Mr. Hewitt earlier that he is very interested, his industry is very interested, in having the Commission be given the opportunity to develop a specific standard for determining who is eligible and who is not to receive a network signal delivered by satellite. That would be more far more reliable than the standard that was put into effect by the U.S. District Court in Florida, which is essentially the Grade B, or the standard that is based on Longley-Rice.

Now Mr. Hewitt has recommended TIREM. The Commission on its own recently, in a very short period of time, came up with a standard that is better than Longley-Rice and offers a greater degree of predictability. I would assume that the organization for which you speak today would have no objection to the Commission having an opportunity to develop that special standard, so that all of our interests are better served by a higher degree of predictability in the future as to who and who cannot get signals from local stations. Would I be correct in making that assumption?

Mr. FISHER. Mr. Boucher, if the current standard turns out to not effectively predict, which so far it has, clearly, anything that helps to improve that standard is worthwhile. I am tempted to say

that each time the facts have been asked for it keeps emerging that the Longley-Rice formula, now with additional amendments, seems to do a heck of a good job. I fear that, no matter how good a job it does, those who just don't like the predictions to come out will keep saying, let's change the standard.

Let me pass along one piece of information which to me was pretty illustrative. You are known widely as both thoughtful and expert in this area, and I have struggled with the realities that you have noted that many people in your district, notwithstanding that the old standards seem to suggest they should get a signal, you felt convinced they really couldn't.

I was handed information today that in, in fact, the Longley-Rice model, as refined most recently by the FCC, that one of the stations whose statistics were handed to me a couple of hours ago, the CBS affiliate from Tri-Cities, would in fact have its service area cut in half. In other words, your suggestion over the years that many people in your area simply couldn't see a Grade B signal now are justified by the Longley-Rice formula itself.

Again, my summary to you is, if standards don't predict, we want them to predict. Remember, we are willing to go with loser pays. So the last thing we want are standards that don't predict. But every information we keep coming up with is that the standards, in fact, do predict.

Mr. TAUZIN. I can say with certainty that the gentleman's time has expired. Thank you.

The Chair will yield to the gentleman from Georgia, Mr. Deal.

Mr. DEAL. Thank you, Mr. Chairman.

In my rural north Georgia area, we have some cable systems, and somebody who has a cable running to their home doesn't have to ask the question of whether or not they meet the Longley-Rice formula or anything else. So I am one of those that wants to cut to the chase and ask, why can't we just solve the problem, instead of spending a lot of time and money deciding whose formula is right or whether you have an adequate Grade A or Grade B signal. Why don't we just get to solving the issue of local-to-local?

In talking and asking that question, most people agree that is really the first issue we ought to deal with. So if we all are pretty much in agreement that the local-to-local is an issue we ought to solve, then I think this committee understands that we can begin that process, hopefully.

Let me ask a couple of other questions. I understand that, Mr. Fisher, a local affiliate would prefer that they have the opportunity to provide that broadcast signal because they are local and they sell advertising. But, for example, if you miss the CBS news on the eastern time schedule, what is so wrong with having the opportunity to pick it up 2 hours later on the western broadcaster? I am not particularly concerned about going down to Pete's Hardware in San Diego, California. Their advertisers are not a threat to your advertisers from an Atlanta affiliate. What is the problem with that?

Mr. FISHER. Well, there are a couple of problems. The first thing is that we would love to think that somebody could, after all these years, have a VCR that would allow them to just punch it and watch that CBS news when they wished with their local advertis-

ers and their local weather warning and their local public safety announcements and their local channel announcements right in there.

But the difficulty is that we have negotiated and paid dearly for program exclusivity, for the right to occupy the air time with programs that we purchase and fill it with advertisements. When the CBS Evening News is run several hours later from the West Coast, those folks are now looking at a program source that was ours exclusively—that is, the provision of the CBS news at a specific time of day with our advertisers in there—and now suddenly they are looking at it with somebody else's advertisers. It is a real economic problem to us.

All we have is advertising. When the revenues are trimmed or dried up or unable to serve all those other folks—I might point out a third of the country isn't wired. They have chosen not to and in some cases will never be able to afford to be wired, and they need to have stations with strong economics.

Mr. DEAL. Okay, I am not sure that I buy totally into that solution, but let me ask another one because you are familiar with my area. Mine is one of those where it is not common, since the FCC's broadcast areas do not go by State lines, in the northwestern corner up there, as you know, Chattanooga is the dominant area. Those people in northwest Georgia are in the primary signal from Chattanooga. But they don't particularly want the Chattanooga local news from that national affiliate. They would much prefer to have yours. How do we solve that problem with satellites?

Mr. FISHER. That has been a tough discussion internal in the business, and it is one of the compromises we all made. Many smaller television communities were very concerned that larger stations would bleed in if satellite technology existed. For folks in smaller communities I consider that to be a realistic concern, that regional superstations would sprout up. So those of us with larger stations agreed that we would only allow our signals—and we would be comfortable with a system that only allowed our signals—to be transmitted in our local market area.

The good news is that, as digital television unfolds, we think that those signals may, in fact, get out there much more cleanly than they do. In fact, there are a fair number of rooftop antennas of the new kind that are available that may, in fact, bring WSB television signal out to northwest Georgia.

But it is a problem. It is the nature of the television business. I would be loathe to tell the Chattanooga market that they ought to simply allow WBS television to come on into their area.

Mr. DEAL. But how do we eliminate the discrimination between the fellow who has the cable in his home and the fellow who has to rely on a satellite transmission?

Mr. FISHER. Well, now——

Mr. DEAL. The cable fellow has yours and Chattanooga as the affiliates.

Mr. FISHER. There are a small number of areas in which that is the case, and those are grandfathered from the beginning of the system. Today, in general, you must rely on a television station from the market in which you are located.

Mr. DEAL. I don't think long term that is a good solution because you still put the satellite subscriber at a disadvantage with this cable competitor over here. For those who don't even have cable access, I don't think that is quite fair.

I would ask the industry to start looking at a solution for that, because in my district it is not only Chattanooga on the northwest; it is Greenville, Spartanburg coming in on the east.

Mr. FISHER. That is a good question. That is worth looking at.

Mr. TAUZIN. Thank you, Mr. Deal. The Chair is pleased to recognize the gentlelady from California, Ms. Eshoo, for a round of questions.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to everyone that has testified. I have two questions. The first I would like to direct to Mr. Hewitt, and the other to Ms. Collier.

My question to Mr. Hewitt is the following: Yesterday a Mr. Hartenstein from Direct TV told a Senate hearing that he would donate subscriber fees to charity if illegal customers were grandfathered under Senator McCain's bill. Today Direct TV says that they will continue providing service to illegal subscribers using a company other than Prime 24 to avoid the court order.

So my question is I think pretty obvious. Is the offer to commit or donate the revenues to charity still on the table? I just want to add that, in any event, I mean, since the Miami court issued the injunction based on the notion of irreparable harm to broadcast stations, don't you think they deserve the money to replace the lost viewers and the ad revenue?

Mr. HEWITT. Well, those are two separate issues.

Ms. ESHOO. Are you dividing them or—

Mr. HEWITT. They are truly divided. I don't think they are directly related. I think what Mr. Hartenstein said that Direct TV is willing to do is take future profits from Fox and CBS and provide them to a charity, so long as Fox and CBS would grandfather those existing consumers in the marketplace.

What also took place, which is a relationship between themselves and Primetime 24, which I am not privy to those contractual agreements, but what they have announced is, which is different than what I think the perception is, what they are going to do is, now that they are uplinking from other sites, they are going to go and put in the FCC new ILLR, which is the new predictive model, and go back through and requalify all these consumers. They will terminate consumers who do not qualify under the FCC's new rule. So they are proceeding to abide by the FCC rule and are going to implement the FCC rule.

Ms. ESHOO. We live in interesting times.

I am not going to pursue that. I think that it is important to place these issues on the table. My interpretation of what was said over in the Senate yesterday is a little different than yours, but that is fair enough.

Mr. TAUZIN. Would the gentlelady yield?

Ms. ESHOO. I would be glad to.

Mr. TAUZIN. Mr. Markey and I would like to suggest that you give the money to save social security first.

Thank you.

Mr. BLUNT. Mr. Chairman, that would have to be 100 percent or 62 percent or 57.

Mr. TAUZIN. The gentlelady has the time.

Ms. ESHOO. Thank you.

Ms. Collier, thank you for your testimony. I think that you have not only heightened the committee's expectations of where your company is going and what its capacities and capabilities would be, but also I think piques our interest in the whole issue of multi-channels, video market, and what we can do to really realize competition.

Can you tell us more about your Internet capabilities? What kind of broadband applications do you anticipate seeing for individuals, for community groups? Give us a taste of that.

Ms. COLLIER. One of the most intriguing aspects of Northpoint is its ability to offer Internet services, and to do so at a low cost, to be not only highly competitive with cable/modems, but perhaps bring these services to people's homes at lower cost. This will enable, because it will be locally based Internet service, it will enable new type of applications that might include distant learning, applications where persons can keep an eye on children in a daycare setting or nursing home contact. All different types of applications; it will be more community-based Internet applications. These, to me, are some of the most intriguing parts of the future of Northpoint as a local broadband system.

Ms. ESHOO. Thank you. Mr. Chairman, I am going to do something unusual and yield back.

Mr. TAUZIN. That is. Thank you very much. The Chair is pleased now to recognize Ms. Barbara Cubin for a round of questions.

Mrs. CUBIN. Thank you, Mr. Chairman.

I wanted to comment, when these members say they have rural areas, they need to see my district. I am from Wyoming. I represent 100,000 square miles with 480,000 people in the State. EchoStar has a big presence in our State, and we really appreciate it. We appreciate the expenditures that have been made.

So I would like to refer to Mr. Markey's constituency, where middle-class and upper middle-class people are the 18-inch satellite users. Well, in my district the poor people and the people who live in towns of 100—and there are many of those—that are 100 miles apart, those are the folks that are using the satellites. So they don't have to be wealthy. It is just a big difference.

But, anyway, I would like to address some questions to Mr. Moskowitz. You said that you would like the policy to be that you should not have to comply with must-carry until you had 15 percent of the market. How close are you to that now?

Mr. MOSKOWITZ. I wish we were closer, but we have a very small percentage of the market, less than 5 percent in every area, and in most cases less than 2 percent in any particular market.

Ms. ESHOO. And have you been working on technology, or how close you are to have a program like North Star, or technology like North Star?

Mr. MOSKOWITZ. Well, Northpoint Technology is——

Ms. ESHOO. Northpoint.

Mr. MOSKOWITZ. [continuing] a terrestrially based system. Obviously, we are a satellite-based system. There have been historically

other systems that have tried to deliver video programming terrestrially. Wireless and MMDS obviously comes to mind. It is a system that didn't work. We certainly hope that Northpoint's technology is successful because we would prefer not to use our scarce bandwidth to deliver local programming by satellite. We have more valuable uses for it. We think we have to do this to compete with cable.

We have some concerns with Northpoint in terms of interference issues, some significant concerns, but we certainly they are successful in it.

Ms. ESHOO. Have you seen the studies that Northpoint has done, the tests, the results of the test? Have you seen those?

Mr. MOSKOWITZ. Yes, we have. Our engineers have evaluated those.

Mrs. CUBIN. And do you have any problems with the methodology or the models that are used?

Mr. MOSKOWITZ. Well, we have some problems with some of the results. Our indications are, at least preliminarily from our engineers, that particularly within a mile of the transmitter site, there is interference with DBS services provided by satellite. Those interference issues may or may not be capable of being worked out, but certainly there are millions and millions of people who would live within a mile of the transmitter site in any particular Northpoint, and those things I think we would have to try to work out.

Mrs. CUBIN. Ms Collier, would you like to respond to that?

Ms. COLLIER. Yes, I would. Actually, that Mr. Moskowitz is making is not accurate in the sense that the very first testing we did, we did in 1997 on the King Ranch, which is a very rural area. If you are speaking—the King Ranch is about the size of Rhode Island, and it was a complete piece of private property where we were able to test. Northpoint turned the power all the way up, turned it all the way down, pointed the dish here and there, and really put the system through its paces.

It is true that at certain very high power levels we were able to turn off the EchoStar dish service at a mile at very high power levels. We would never operate at those power levels in an urban environment or in a real-world environment. So we were able, because we were on the King Ranch on private property, to test to failure.

I think that the work that we did in an urban setting showed how we could operate. We have a number of techniques available to us that make the service area completely immune from interference to their services.

Our report that we just filed in December, I hope you will have the opportunity to also evaluate more recent work that we did, and to take a look that we have done over a period of time.

So I think that with any new technology, you want to learn what its envelope is, where it works and where it doesn't work, and, therefore, to focus it to where it does work. One place that we will work very well is actually in a rural area because our technology is very, very low cost. Therefore, it may actually be one of the first and best ways to bring advanced broadband systems to very rural areas.

Mrs. CUBIN. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Ms. Cubin.

The Chair recognizes the gentleman from Illinois, Mr. Shimkus, for a round of questions.

Mr. SHIMKUS. Thank you, Mr. Chairman.

An interesting debate—free over-the-air broadcast has really been a hallmark of our society for a long time. Now, since we have the opportunity for profit through the selling of more signals, either direct satellite or to cable, we have more dilemmas.

My district is also—actually, it is covered by four media markets—St. Louis, Quincy, Springfield, and some part of Paddukah, Kentucky. In that, there are many white areas in that I have two river systems, the Mississippi River and the Illinois River, which causes reception problems.

But the basic premise of the local broadcast signal, and the importance of it, is critical not just for the local economy, but a local identity, and also, really health and safety concerns. We experienced in 1993 the Great Flood and levies breaking, especially on the Missouri side of the city of Quincy, in which lives were saved because of the coverage by the local affiliate on a 24-hour watch of the levy system.

Also, during the spring and summer, we are in Tornado Alley, in which the technology is there by local broadcast standards to not only hear the sirens, but if you run down and turn on the TV, the local broadcast station—and I get mine through cable locally, so my wife can follow the C-SPAN activities—but they will now marry it down to the block. They will pinpoint. Not only if you hear the broadcast in the whole St. Louis metropolitan area, you can see if the tornado is heading toward Collinsville or Maryville or Edwardsville and be even more prepared.

Sometimes we lose sight of—

Mr. TAUZIN. Would the gentleman yield?

Mr. SHIMKUS. I will.

Mr. TAUZIN. Just to emphasize this point: We were in Peoria with the committee in the middle of one of those tornado alerts, and I will never forget how all the local broadcast stations, which were giving us block-by-block information as to where the tornado was coming, it was shut off the air so that the emergency broadcast signal could be turned on. All we heard on the emergency broadcast channel was that there were tornadoes in the area.

The local systems were telling us block by block where it was, and that truly made the point for our committee members who were in Peoria at the time.

Thank you, gentlemen, for letting me make the point.

Mr. SHIMKUS. And, you know, the point that I am making is that, in this era of competition—and I really applaud the Direct Satellite Broadcast because we do need a competitor to cable—they have to carry the local signal for health and safety reasons, and, also, I think just the good government aspect of helping us keep our communities together and focused on even the good things, the public service announcements, the public service carrying of the Cancer Society and all those other activities. So I want to put that plug in.

During my district work period, I was taken to a home at which time we, from that home, called to subscribe to a Direct Satellite

Broadcast, which they said, okay, and you are in an area in which you can receive all the network signals. From that home, you could see the broadcast tower of the local affiliate. So there is a problem that has to be resolved, because we are talking about franchise and franchise rights that are important to keeping the local broadcast affiliate afloat. That was a pretty startling district work period, when you could make the call and then over the phone you hear you can get all these Chicago, New York affiliates, and then the tower is right there. Again, I think the point is made.

I need to ask my two quick questions with that intro. Ms. Collier, the fact that I represent a rural area, I think in your testimony, in the questions that you answered, you think that you will have a great ability to serve a rural area with your technology, is that correct?

Ms. COLLIER. Yes, it is. And as a matter of fact, we have affiliates, actually qualified, financially qualified business people who stand ready to offer this service in every television market in the country, and to offer it promptly and completely.

Mr. SHIMKUS. And I need to ask a question to Ms. Lathen. The FCC recently revised its program access rules, but in doing so, declined to apply the rules to programming delivered terrestrially and to non-vertically integrated programming. Does the Commission believe it has the authority to send its rules to these two areas?

Ms. LATHEN. You are correct; we recently revised our rules. We did not believe that we had the authority to extend the rules to programming delivered terrestrially. We believe that that was something that Congress could have done and did not specifically do that.

Mr. SHIMKUS. Thank you.

Mr. MOSKOWITZ. Congressman, might I take a moment and address—

Mr. SHIMKUS. The tower issue? Go ahead.

Mr. MOSKOWITZ. Permit me, Mr. Chairman?

Mr. TAUZIN. Yes, you may, please.

Mr. MOSKOWITZ. Thank you. I think it is important to keep in mind that we certainly agree that delivery of local news and weather alerts is very important. To the extent that a consumer living in a particular local area can receive his or her local programming with an off-air antenna, that consumer can and should do so, and can make the choice to do so, and would get those local alerts, whether they get DBS programming or not. To the extent the consumer lives so far from the tower that they can't get it with an off-air antenna, then certainly our providing distant network signal doesn't injure that consumers.

But the other thing that came to mind is, even the consumer who lives in close proximity to the tower, can be in a position where they can't get a good signal. There are plenty who can get a good signal. But urban and suburban areas with tall building and other obstructions—the biggest problem we have today isn't really a signal that doesn't meet a Grade B standard; it is not strong enough. It is a problem with the ghosting that occurs that was okay in the 1950's because you couldn't expect anything better, but today people expect better. A signal that has 10 ghosts in it because it

bounced off of 10 buildings around the consumer right around the tower isn't acceptable for consumers today.

Mr. SHIMKUS. I will bring in my own show next time, but this was in a rural part of Illinois, farmland. The biggest building is the hog barn.

I understand your point. The issue is there is a problem with the marketing of the ability for other network signals clearly within all of the parameters that we have to make a determination of, but I appreciate—we can solve this, though. We have got good competitors here and we are fighting and kicking and screaming, but we have got to fight for the consumer and for public safety concerns also.

Mr. MOSKOWITZ. I would say EchoStar, and I think others as well, have implemented systems that certainly would not allow that consumer close to the tower to get a signal without an actual test. That is how we operate.

Mr. SHIMKUS. But you understand, if the consumer has to get two antennas and rely on two opportunities in two different ways, there is never going to be the competition that is need for cable. It is just not going to occur. It gets too confusing.

Mr. MOSKOWITZ. It is complicated and difficult.

Mr. SHIMKUS. Thank you for your patience, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Shimkus. I want to point out he has big hogs in his district. He could have a log of bounced signals among those hogs.

I want to recognize the gentlelady, Ms. Heather Wilson, for a round of questions.

Mrs. WILSON. Thank you, Mr. Chairman. I think, like Mrs. Cubin, my constituents as elite and cosmopolitan as Mr. Markey's in that we have the fifth largest State in the Nation geographically with some of the fewest people in New Mexico. Indeed, in our State we have 40 percent of the Navajo Nation, which is the size of the State of West Virginia, that does not even have telephone service yet. So the idea that cable will be coming out to Windowrock is something that may be waiting until the 22nd century.

In New Mexico, between 11 and 15 percent of people are already served by satellite dishes, not because they are the high end of the market, but because that is the only way they can get a signal. In reality, in New Mexico we have a system where we have 298 translators from our stations, mostly based in Albuquerque, in order to cover all of New Mexico. So we are in a place where we are talking not people per square mile, but square mile per person.

That is a different situation than most of my colleagues on this committee with few exceptions.

Mr. Fisher, one of the concerns that I have—and has been expressed and explored by some others—has to do with the effect on a change for allowing Wild West, shall I say, competition and eroding the local broadcast market on what will happen to local broadcasters and local news. I would guess in that in most areas the first people to get satellites are not like my rural constituents, but those that are the high end of the economic scale, who are probably who your advertisers are looking to attract.

From your business models, and the business models of the people that you represent, what percent of the market share lost would result in elimination or scaling-back of local television news?

Mr. FISHER. I'm sorry, could you repeat the question, ma'am? I had a little trouble hearing it.

Mrs. WILSON. Let me try.

Mr. FISHER. Just the last part is where I lost you.

Mrs. WILSON. What percent of the market share of your market do you need to lose in order for local broadcast television to no longer be a viable business?

Mr. FISHER. I understand. Losses are losses. The television industry has engaged in substantial layoffs in the last 4 to 5 years. Competition has intensified. That is the way of the open marketplace. So it is really simply a function of more pain will mean more layoffs.

The economic crunch has already visited our industry. We have been through a couple, and we are ongoing now. The headlines are full of discussions about network cutbacks. So I can only tell you that this is a real issue for us. As the ad revenues dry up, it is harder and harder for us to provide the local programming, which is the basis of our service.

Mrs. WILSON. Mr. Hutchinson, I have a question for you. You talked about 68 markets that you are planning on serving. This may be a technological question. When you talk about which markets or prioritize those markets, does your technology look at customers available or is it a concentration of people in a particular area?

Mr. HUTCHINSON. No, it is not concentration of people. It is simply based on how to reach the most Americans with the capacity that we have.

Mrs. WILSON. I guess what I am trying to get at here is, are rural areas going to be disadvantaged by this? Are you likely going to be concentrating where there are more people in the East, or is local-to-local by your system is not viable in a State like New Mexico?

Mr. HUTCHINSON. Because the way the population is distributed, the logical way is to go down through market rank, largest market to second largest to third largest, and so on, and we were able to the 68th largest market before we ran out of capacity. That is with the first two satellites.

When I reference the phase two, the other two satellites that we would like to put up, we could do the rest of the country. There are 800 television stations that can be served on two satellites. On another two, we could hit the other 800, for a total of 1,600. We could hit the whole country.

Mrs. WILSON. So the fact that in Albuquerque, for example, and all of New Mexico, we have ABC, CBS, NBC, Una Vision, Fox, and PBS—we are the 49th largest market, but we have 289 translators to cover that area; that is not a factor?

Mr. HUTCHINSON. No, it is not. If you are the 49th largest market, you would be included.

Mrs. WILSON. Mr. Moskowitz, I have a question for you. Despite our best efforts to keep America reading, 95 percent of Americans are principally relying on television to get their news. Where do

your customers get their local news, particularly your customers—and you have some—in downtown Albuquerque that are calling me to complaint that they are getting turned off, even though our signal comes from the mountaintop outside of town? Where do they get their local news?

Mr. MOSKOWITZ. Well, a satellite customer may get local news, to the extent we are doing local-to-local, obviously, from television; obviously, they can get it from print, newspapers, as well. To the extent, obviously, that we are delivering a distant signal, they can't get that local channel by satellite, except that EchoStar is at the forefront of delivering data services by satellite as well. Our interactive data services do allow you to click on a button—and those are introduced this year with a Web TV problem, with an open TV product, and if you are connected by twisted pair, you will be able to get your local weather, your local news, if you want it.

Mrs. WILSON. From the television or from an Internet site or—

Mr. MOSKOWITZ. From Internet sites. Some of it we will actually do by satellite as well. A lot of the data we will download by satellite. We are looking at a service that we would add later this year that would actually provide your local weather for all 211 DMAs on data bases by satellite. So if you clicked on a button, if you had the right product and you clicked on a button, you would be able to get that. You wouldn't be able to get your local weather man showing you the whole map, but you could get a stream of data that told you about your local weather.

Mrs. WILSON. If I may ask one final question, Mr. Chairman—yesterday afternoon we had a wildfire outside of Moriarity, New Mexico that was moving three directions at the same time over 2,000 acres. Where would your customers learn about that if they couldn't get the broadcast local news?

Mr. MOSKOWITZ. If they couldn't get it with an off-air antenna?

Mrs. WILSON. I am a techno-peasant.

I don't know whether they can get that or even if they are set up to get that if they have your system.

Mr. MOSKOWITZ. To the extent they could get it—oh, our system actually integrates off-air antennas. So we have a slot in the back of every one of our receivers where you can plug in an off-air antenna and switch seamlessly between off-air channels and satellite-delivered program. So to the extent that customer can receive a decent off-air signal, we can respond in that manner as well.

Mr. TAUZIN. When I was demonstrating outmoded and old technologies, I would have done smoke signals, too, but they wouldn't let me make a fire in this room.

But, obviously, that continues to be a problem out West, where the local-into-local is still not available in many communities.

Mr. PICKERING from Mississippi for a round of questions.

Mr. PICKERING. Mr. Chairman, thank you, and I want to commend you for having this hearing. This is very important in my State, as you can imagine, similar to Louisiana. The percentage of people who have satellite dishes, as well as the importance of the local-to-local in the local community responsibility is carried by the local broadcasters, trying to find a way to address our objectives here resolving this.

Mr. Moskowitz, you have been very aggressive in trying to crack down and enforce copyright law on those individuals who pirate satellite signals. Because of that, I would assume that you believe it is very legitimate for those who also want to enforce the law in the case of the Satellite Home Viewer Act. I guess the first question is establishing the premise that we should enforce and comply with the law whether it is pirating of satellite signal or whether it is in violation of the Satellite Home Viewer Act. I just wanted to see if you agree with that.

Mr. MOSKOWITZ. I absolutely agree that we should comply with all of the laws, and EchoStar believes that it does so.

Mr. PICKERING. As a result, we are where we are today, trying to see if we can get to local-to-local as quickly as possible. For my district my question is: For a place like Meridian, Mississippi, or Columbus, where there are 20,000, 30,000 people, rural areas, can you do local-to-local from a technological point of view within 2 years?

Mr. MOSKOWITZ. I am sorry, but the simple answer is we cannot. You have to crawl before you can walk. If Congress had dictated that no one could drive on an interstate highway until the system served all 211 of the largest cities in the country, we would never have built an interstate highway system. It is the same with satellite; we have to do it a little bit at a time. We are risking huge dollars of our capital and our money to try to prove that local-to-local does work, and we can create effective competition and people will take it. If we are successful, then we will be able to do more cities, and Wall Street will finance spot-beam satellites for us, and we will be able to carry more cities. But, today, the only thing I can tell you is that we do have receivers with inputs for off-air antennas that a consumer can get an off-air signal with antenna. They can hook it up to our system and watch it seamlessly.

Mr. PICKERING. How long do you think it will take, both from an economic market perspective and technological perspective, to get to the towns that I mentioned in a place like Mississippi or other rural areas across the country?

Mr. MOSKOWITZ. I can't make a prediction. We have been in support of local-to-local and went out and spent our money to do it. Most people have called us crazy and said it is not an efficient use of our resources. We think we are right. We are betting we are right. We will have to wait and see what the market dictates.

Mr. PICKERING. Now some of the legislative proposals mandate a 2-year transition or a 3-year transition local-to-local. Can you meet that mandate?—I guess is my fundamental question.

Mr. MOSKOWITZ. Can we meet it? Could we meet a 2- or 3-year implementation of providing local-to-local for all 211 DMAs? The answer is no; we simply do not have—there is not enough spectrum in the sky to do that.

Mr. PICKERING. Mr. Chairman, if you could indulge me just a few more minutes?

There have been some proposals at different points in this process trying to address the issue of lost revenue for the local affiliates. Have there been any projections, any estimates? I know some of us have asked you this question. What is the economic cost or

consequence or displacement to the local affiliates in lost revenues? Is there any dollar figure that the broadcasters have projected?

Mr. FISHER. There is no specific dollar figure that has been created, no, sir.

Mr. PICKERING. Would there be a way to determine the harm, the economic harm?

Mr. FISHER. I doubt it. I can you give you a common-sense answer. You all buy advertising, and you see the headlines. A big ad cost, for example, for commercials in the Super Bowl or "Seinfeld"—those costs are not straight-lined. It is not like you have double the number of viewers, so that the commercial is double the cost.

We are a reach medium, and there is a premium for reach. As you cut back that reach, it is not just a straight-line cutback. It is a complicated formula. I wish there was a formula. I mean, it is a complicated process. The bottom line is all to sell is reach. When you trim that reach, the law of unforeseen consequences is operating at a real high level.

Mr. PICKERING. Would there be any way to have a compensation system to compensate the local affiliates for the displacement during the transition period?

Mr. FISHER. This has been asked to me, and it is kind of like, do we want farm support? To be honest with you, we are more happy in an unregulated, unsupported, "let us just fight it out in our local community" basis. Give the chance to serve the viewers, and we will go after it.

Technology is moving pretty quick. We thought that by offering 2 or 3 years of transition, we were trying to go on with the program here. We really hope that that is the way it can be accomplished.

Mr. PICKERING. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. The gentleman from Ohio, Mr. Oxley, for a round of questions.

Mr. OXLEY. Thank you.

Mr. Fisher, there has been some discussion about the possibility of going into court and asking for a delay as opposed to passing legislation. Has that been considered? And wouldn't it seem it would be at least an indication that most people believe the FCC standards are perhaps more accurate than have been proposed before, and it would give the opportunity for everybody to take a deep breath and perhaps select, or at least get an idea about, who is underserved and who is not?

Mr. FISHER. Mr. Oxley, I really want to say yes, but I can't. We delayed filing suit because folks asked us not to. It took a couple of years for those suits to be accomplished.

When the first set of deadlines arrived, the industry agreed to compromise, much of that at the suggestion of Members of Congress. We worked very hard during that period to assure the Decisionmark system was up and running, and that we could process quickly.

Someday this deadline has to come. We think we are moving very expeditiously to grant people those waivers under the newest of the FCC definitions. We just honestly and sincerely believe we have got to get by this hump, that most people are going to realize

they have always been able to see TV; they are going to get it, and we are going to be past it.

Mr. OXLEY. Mr. Hewitt, what do you think about that?

Mr. HEWITT. Well, we commend the broadcasters who have been forthright in providing waivers. We think that is very commendable. But it has been very, very sporadic. There are many affiliates that have provided no waivers, and it is not a kind of system that is assuring a consumer who does not have access to a signal the guarantee that they will get access to a network. That is why we have gone forward saying the FCC should establish a standard for reception under SHVA, and on top of it should mandate—mandate—a predictive model, methodology, so that we could know ahead of time—there is no question between ourselves, the broadcasters, and the consumer that they qualify.

Now if you take a look at the number of waivers, some of waivers are granted, by the way, for other reasons than the fact they can't receive a signal, many of them for business reasons. Again, we certainly don't oppose that, but the fact is, if you look at all these black dots over here on the yellow, the broadcasters went to Miami asking for the yellow to be invoked. All those people, if the FCC hadn't ruled, would have been turned off. Now they may still be turned off, because it is my understanding the judge has not ruled on the motion by the broadcasters in conjunction with Primetime 24 or the implementation of the FCC order. We hope she does. We commend the broadcasters for joining us on that.

So certainly there is more time needed for us to implement the FCC standard, even though we don't believe that predictive methodology is the best.

Mr. OXLEY. Mr. Fisher, is that correct, what he said?

Mr. FISHER. I disagree with a great deal of it. Let me add one 15-second postscript. There is no change in the standard that will save 90 percent of these illegal customers. They are getting clear signals. We are talking about just at the margin. Mr. Chairman, I think you isolated that well when you got down to the 70,000 folks. Further delay doesn't get at the root problem. The root problem is that 90 percent of these people were misled, and what they ought to get is antennas from the satellite industry, which is exactly what they are giving to the new customers who sign up as of tomorrow.

Mr. OXLEY. Let me ask, Mr. Perry, how long would it take to run the new numbers?

Mr. PERRY. We could submit the new numbers tomorrow.

Mr. OXLEY. Tomorrow?

Mr. PERRY. Yes. We are ready. In fact, we serve over 82 percent of the broadcasters, ABC, CBS, Fox, many of the NBC stations, the entire C-band industry, and we have yet to serve EchoStar and Direct TV.

Mr. OXLEY. An obvious question would be, what is another week, since the suit was filed in March of—

Mr. PERRY. Well, we will be ready. We are ready to run the names. It will take a period of about 4 hours to rerun the names according to the FCC guidelines. We stand ready to do it.

Mr. OXLEY. Thank you. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Oxley. We will do a second round, to the extent you would like to do one. I do want to recognize myself for a round. I want to try to get something understood.

One of the concerns I have as we move past the immediate problem of the decision which is right upon us—is the reason why we are suggesting that perhaps you give some breathing room to us as we get this immediate problem, and into the question of, what do we do as a permanent solution to local-into-local, so that competition, Mr. Kimmelman, is real, not imagined in the communities of America?

This question arises: What happens if, Ms. Collier, you get authorized to use this spectrum by the FCC? What happens if we pass the bill that authorizes EchoStar to move immediately under some limited time period for must-carry to be fully implemented? What happens if we do that?

Mr. Hutchinson, does your system fall financially because there are alternatives now competing with it?

What happens to satellites, Mr. Hewitt, if Ms. Collier's system can launch and offer to citizens, not a supplement to your service, not just the local signals to complement your satellite signals, but a full complement of cable programming together with local signals, more like the OMDS system in New Orleans or Atlanta that Bell South has launched? What happens? Are we going to see one system defeat the other and the financial plans of launching delayed? Do we have to consider that?

Obviously, we shouldn't be the ones to pick the winners and losers, and I don't want to be. That is the last thing we as a committee of Congress or Congress ought to be doing.

What I suppose I am getting to is, I want to make sure there are some competitors left standing at the end of the day. If we write the bill in such a way that you can't launch, because we have written it in such a way that the economics of your launching on these new systems is dramatically damaged by the language of our bill, then I have to be concerned.

Obviously, the optimum solution would be if you could all launch. There could be a K-band launch and a Northpoint successful strategy, together with an EchoStar strategy, that would not knock satellites out of the sky as a competitor, nor defeat one of your other plans simultaneously.

But is that a problem? Do we need to be concerned about that? Do any of you, in other words, make your decisions based upon whether or not these other systems go or don't go? Anyone want to handle that? Mr. Hewitt?

Mr. HEWITT. Well, Mr. Chairman, the marketplace should decide who the winners and losers are. If Northpoint launches with any other spectrum but DBS, they are welcome to the fray, and certainly we will have no problem. MMDS and LMDS have been proven not to be very effective competitors in the marketplace, as we all know. We are very concerned about the interference with our signal. If there is no interference, if they use another spectrum from then BBS, then power to them. The more in the marketplace, the better for consumers.

Mr. TAUZIN. Let me ask, Ms. Collier, how are you different from an LMDS system?

Ms. COLLIER. I think, in particular, the LMDS area, LMDS, of course, is in a much higher frequency, and the reach of those cells is much, much smaller. LMDS I don't think is a viable frequency for broadcasting. It is really more for local loop solutions, telephone solutions. So LMDS I don't think will ever be a viable thing for broadcasting. Listening to some of the members in the rural areas, LMDS is simply not going to be effective in working even in suburban areas; it is certainly not going to be a rural application.

Mr. TAUZIN. But, to get back to this, assuming the interference problem can be resolved—Mr. Moskowitz has pointed out that his engineers spotted it; you challenged the conclusion, and you are concerned about it. Assuming that can be solved, and Ms. Collier's system is launched as a full-blown competitor to cable and to satellite, using the same frequency that satellite is launched on, but, nevertheless, not interfering with you, if that is achievable, can you live with that?

Mr. HEWITT. Absolutely. We will beat them.

Mr. TAUZIN. All right. Can you live with the fact, Mr. Hutchinson, that Ms. Collier is out there competing with a new terrestrial system and EchoStar has been given a grace period in which to upgrade its system to full must-carry?

Mr. HUTCHINSON. Yes, we are prepared to take that risk. I want to emphasize that the bill we seek is not a Capital Broadcasting bill. It is a bill to enable local-to-local. That is our primary mission. Now we think we have the best idea. We think we can win in the marketplace. We have confidence in that.

What we do know is, if we don't get compulsory copyright, retransmission consent, and must-carry, we don't have a chance of solving it—

Mr. TAUZIN. But my point is it is not essential to your build-out plans for us to deny EchoStar the right to move forward under some local-into-local that at least gives a grace period for full must-carry?

Mr. HUTCHINSON. No, it is not. In fact, we accept transitional must-carry.

Mr. KIMMELMAN. Mr. Chairman, may I interject something?

Mr. TAUZIN. Yes, Mr. Kimmelman.

Mr. KIMMELMAN. Not at all speaking from the business side, but as an observer of how this has unfolded in the areas you have tried to interject competition, these people are all very civilized at the table, but I think you should expect lawsuits and challenges. It may not be from the people sitting before you, but from those around the industry. I think there will always be problems. I think you should expect mergers, as we have seen in the past.

Some people have a lot of investment already ineffectively in the ground, in the sky, and they have got to do something with it. I think you should expect a lot of market activity that is not obvious at this point in time.

Mr. TAUZIN. That is probably always correct. But let me get to one of those competitive features.

Ms. Collier, if you are applying for use of this spectrum simply to complement the DBS signal with local channels, that may be one thing in terms of your not having to pay for that spectrum. But if you are going to use the DBS spectrum to fully compete against

DBS, who has to pay for their spectrum, should not be required to also bid in that spectrum or pay for it at the same rate as DBS?

Ms. COLLIER. Well, I think that there are—I don't believe that the original DBS applicants were subjected to an auction proceeding. So that wouldn't be completely—

Mr. TAUZIN. News Corps was, I think, right?

Ms. COLLIER. But I believe that Direct TV—

Mr. MOSKOWITZ. Last I checked, we paid about \$700 million.

Mr. TAUZIN. Yes, there are some big checks paid out there. What I am asking is, if you become a full-blown competitor rather than a tie-in to the DBS competitor, is it fair for the FCC to allow you to use that spectrum without any charge? Is that fair competition?

Ms. COLLIER. As a member of the private sector, of course, I am against auctions.

So I think in the case of our particular situation, we applied for licenses subject to a cutoff. We applied in a satellite proceeding where a number of other applicants came in there. As the FCC person referenced, there are several applicants in there, and we are the only terrestrial applicant who stood up to do this work. So we are here. We are ready to go, and we are the only one here.

Mr. TAUZIN. Well, I think you got my drift. We are concerned not only that we have competition, but that we have as much fair competition, so that all of you can compete for service and prices and terms on an equal basis for consumers' dollars.

You have taught me a lot today. Thank you. I was concerned that one or the other of you might not move if the other moved, but I think I have gotten some good signals here today.

The Chair will recognize Mr. Markey, if he has a round.

Mr. MARKEY. That is funny because I got a fuzzy signal today.

Mr. TAUZIN. You did?

Mr. MARKEY. Yes. I have got a Grade B seat over here.

I always try to apply, what would Tip O'Neil think about the issue? How would he deal with it? I think what he would say here is that all satellite politics is local-into-local.

If we can figure that out, then it is a done deal; we've got the whole thing solved.

So I guess the way I view it is the same way I view the telephone, the cable, the terrestrial issue, the wireline issue. Clearly, we didn't want every single company to have to put their own telephone poles going down the street. We had to find out some way could use the common telephone pole if we wanted competition—and cable, and electric, and telephone. People didn't like it at the time, but we had a higher public interest agenda that we were trying to advance.

Clearly, when we were trying to introduce competition into the long distance marketplace, AT&T didn't like the way in which we were forcing them to let MCI and Sprint and others at that nascent stage of competition to gain access to stuff, but we had a higher public policy interest that we were seeking to achieve.

It seems to me here that we have to find some way of ensuring that the new players here that weren't anticipated 4 and 5 years ago are able to get in, because we are only going to get the real consumer benefits if you have this ongoing technological challenge

to the incumbents that forces everyone to make the new investment and to reconfigure the way in which they serve consumers.

So, Ms. Collier here and Mr. Moskowitz and Mr. Hutchinson, along with the incumbents, both terrestrial and spectrum-based, each has kind of an understandable stake in the position that they are holding today.

But this committee historically has looked at the issues from the perspective not of the incumbents, but the perspective of the consumer. What is the best way in which we can achieve the goal of having more and rapid deployment of technologies. Over the years we have been the biggest fans of the cable industry, in the 1970's and early 1980's; I am the biggest fan of the satellite industry, and we continue as each succeeding generation comes along to try to find ways of accommodating them.

So I guess what I would say is that you are probably right, Mr. Kimmelman, that whatever we try to do here is going to be in court; that is also part of the tradition here, although we are undefeated.

We win every time, but it just delays it by an extra couple of years, which in corporate parlance is a pretty good strategy, if you can get that extra couple of years of market share at the highest possible percentage.

But, nonetheless, I think what you are finding up here on the committee is a consensus that we are going to have to move forward on this set of issues. Local-into-local is going to have to get solved. It is going to have to get solved really fast, and we are going to have to ask for the cooperation of everyone in achieving that goal.

Again, it is not toward the goal of undermining any incumbent. It is toward the goal of advancing the historical tradition and philosophy of the committee. Otherwise, we might as well not exist.

But I thank each of you for your testimony.

You, Ms. Lathen, you have got to be happy that you came to a hearing on an issue like this and you weren't the focus of anybody's attention.

I mean, this is an historic—the FCC just sits over here on the sidelines. But you can help us, I think, to think through on an expedited basis what the best way is of resolving some of these technical issues, and then leave to us the formidable political choices that we have to make. But I think we should make them.

I think actually the crisis being created by the imminent cutoffs is the best thing that has ever happened to us because it is going to focus us on the solutions that we are going to have to create for the long term. It might turn out to be a real blessing for the committee that we are going to have this short-term crisis. We will respond to it; we will try to create a moratorium, but not to make it permanent, only to give us the time to—we want to find a permanent solution, not a permanent moratorium defining the solution. I think today's hearing is going to advance that goal mightily.

I thank you, Mr. Chairman, for this hearing.

Mr. TAUZIN. Thank you, Mr. Markey.

Ms. Lathen, let me also point out that the committee went extremely light on the FCC today. In fact, you have tried to help, and we want to thank you for that. But you also helped make my case

for FCC reform when you pointed out that this was a cross-bureau problem in terms of getting as simple a thing as a new solution invented for this problem. So, again, I want to thank you for the effort, not only your staff has made in trying to find a solution, but, hopefully, to suggest to the parties again that they use some time to implement your new suggestion in a way that at least minimizes this crisis and gives us some time to work it out, instead of having to work it out in the heat of emotion, as we so often have to do, when every Member on the floor who does not sit through these hearings, and does not understand many of the very delicate balances we have to make, as Mr. Kimmelman pointed out, between all of your very personal, special interests in what you want to accomplish for your business purposes, and doesn't understand the value perhaps of some of the localisms that are at stake here. All those Members just receive phone calls from people saying, "The lights are being turned off on my television. What are you people doing about it?"

You understand, if you can just give us some time, and perhaps come to some agreement to utilize the new information provided by the FCC to minimize the problems, then we would deeply, again, appreciate it and suggest it again.

Let me also mention something that Mr. Markey alluded to that I want to draw all your attentions to: It will do us little good for us to solve the local-into-local issue if we are faced with a whole cadre of Americans who live in multi-family dwellings, in some cases who own their own dwelling in a condominium-type setting—

Mr. MARKEY. Anyone we're thinking of?

Mr. TAUZIN. [continuing] Yes, someone real close to me—who are not entitled to receive services from any competitor because they are tied into a single provider.

The issue of wiring in buildings is a very important one. I know building owners have a great stake in that issue, and we want to hear from them, and we will. But if the building becomes a bottleneck or the development project or the commercial building is a bottleneck to tenants and co-owners receiving the benefits of competition in the delivery of all these services, we have left out an awful lot of Americans from the new competitive systems that all of you are planning to deploy. I can't put up a DBS on my townhouse. Because we have an exclusive agreement with cable, I am being deprived of the benefits of that competition. People like me are complaining already, and we are hearing more and more from them.

We will hold a hearing on the issue of access from the building site at some point, and try to resolve some of these very thorny issues of property rights and contract law and communication access competition.

Again, I want to thank you very much. This has been, indeed, an illuminating session—while the picture may be so fuzzy we may need a waiver to understand it.

Before too very long we will be drafting. If you have anything that you want to add to this record, we will keep the record open for 2 weeks. If you wish to make a submittal, by unanimous consent, the record will stay open for 2 weeks for either additional tes-

timony or documents or other extraneous matter you wish to submit to us. If you have suggestions for the language of the legislation we are drafting, now would be a good time to put your legal minds to work and suggest them and bring them to us.

Again, my thanks for a long afternoon, but a very productive one. The committee stands adjourned.

[Whereupon, at 5:40 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF HON. PORTER J. GOSS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

I am very pleased to present my views to the subcommittee regarding recent problems associated with receiving network signals via satellite. I commend Chairman Tauzin and Ranking Member Markey for their leadership on this issue and for taking the initiative to look into this matter. This is a problem that is ripe for action and well deserving of Congressional oversight and attention.

During the past several months, I have heard from well over a thousand of my constituents who are angry because they will soon lose some of their network signals, which were previously provided via satellite. In fact, this is currently the single biggest issue in my mailbag. Through this correspondence, I quickly became aware that the Satellite Home Viewer Act prohibits a person from receiving network signals, such as CBS and FOX, through a satellite dish unless the person lives in an "unserved" area.

The current law, which is now being enforced, states that a person must be unable to receive a "Grade B" signal and must not have subscribed to cable within the past 90 days in order to be eligible to receive network signals via satellite. The problem in my district—and in most places, I assume—is that just because a person can be defined as being in a Grade B area, does not necessarily mean that they can actually receive a signal. What we are left with is a situation where people simply do not have access to some of the larger network stations at all, unless they opt to pay twice and order cable as well. This problem is particularly prevalent in the rural and island areas in Southwest Florida.

While I understand that the Federal Communications Commission has completed a rulemaking to redefine the Grade B contour, thus providing a partial solution, there are some larger issues still at stake which will need to be addressed. It concerns me that the millions of people who thought they were purchasing a certain product—with no intention of violating the law—are now being denied a major component of the product. However, I also recognize that importing distant signals into local markets could potentially be damaging to the local network affiliates, and we should certainly keep this in mind in trying to solve the problem within everyone's best interest. What we need is an appropriate balance that provides flexibility for satellite consumers without offending the legitimate rights of our local affiliates.

I do not claim to have expertise in the area of telecommunications copyright laws, but I would like to assist in developing a legislative solution. In particular, I would like to offer my assistance at the Rules Committee stage, to ensure that your Committee's work product may be expeditiously moved to the House floor for consideration.

PREPARED STATEMENT OF HON. BERNARD SANDERS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF VERMONT

Mr. Chairman, I support changes to the Satellite Home Viewer Act which will prevent the disconnection of distant network programming for customers who cannot receive over-the-air signals from their local broadcasters—including many of the 65,000 satellite subscribers in Vermont.

The Satellite Home Viewer Act (SHVA) established criteria for satellite companies to provide distant signal network stations to people in "unserved" areas—those who are unable to receive over-the-air broadcasts of their local network affiliates. Last summer, I co-signed a letter asking the FCC to redefine the measurements used to determine if a waiver may be granted for a subscriber to receive distant network service via satellite. Although the FCC adjusted the requirements for waiver eligibility at the beginning of this month, only legislative changes to the SHVA will allow satellite companies to deliver network signals to all of their customers.

The "Grade B" contour must be redefined, in consumer friendly terms, as an area in which 100 percent of the population, using readily available, affordable equip-

ment, receive over-the-air coverage by network affiliates 100 percent of the time with 100 percent reliability. With that definition, only those consumers who in fact receive local network signals over-the-air would be prevented from receiving network signals by satellite. The constituents most strongly effected by the "Grade B" definition are in rural, mountainous areas—like Vermont.

These service terminations also raise serious concerns about competition. In the last year we have seen cable rates rise more than four times the rate of inflation. Unless direct broadcast satellite service is allowed to be a viable option for multichannel video service, cable rates will continue to soar.

FEDERAL COMMUNICATIONS COMMISSION
March 17, 1999

The Honorable W.J. "BILLY" TAUZIN, *Chairman*
Subcommittee on Telecommunications, Trade and Consumer Protection
U.S. House of Representatives, Committee on Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

DEAR MR. CHAIRMAN: I am enclosing my responses to the follow-up questions from Congressman Gillmore, to the February 24, 1999 hearing on Reauthorization of the Satellite Home Viewer Act. Please let me know if there is any additional information I can provide to the Subcommittee, or if I can be of any further assistance.

Sincerely,

DEBORAH A. LATHEN
Chief, Cable Services Bureau

RESPONSES TO QUESTIONS FROM REP. GILLMOR

Question: Do you agree that wireline cable systems are the dominant providers of multichannel video programming today and in the near future?

Response: Yes. As the Commission reported to Congress in its *Fifth Annual Report* on the status of competition in markets for the delivery of video programming, we find that competitive alternatives and consumer choices in the multichannel video programming distribution (MVPD) market are still developing. Cable television continues to be the primary delivery technology for the distribution of multichannel video programming and continues to occupy a dominant position in the multichannel video programming distribution marketplace. As of June 1998, 85% of all MVPD subscribers received video programming service from local franchised cable operators compared to 87% a year earlier.

It is also important to note that the cable industry has continued to grow in several areas such as subscriber penetration, channel capacity, the number of programming services available, revenues, audience ratings, and expenditures on programming. In terms of subscribership, for example, the number of cable television subscribers had increased to 65.4 million as of June 1998, a 2% increase from June 1997.

Question: Does the FCC believe that DBS providers are the entities most likely to mount a significant competitive challenge to wireline cable operators in the near future?

Response: Yes. In the *Fifth Annual Competition Report*, the Commission found that there has been an increase in the total number of subscribers to noncable multichannel video programming distributors. Much of this increase is attributable to the continued growth of direct broadcast satellite (DBS) service, which is attracting former cable subscribers and consumers not previously subscribing to an MVPD.

DBS continues to represent the single largest competitor to cable television operators and DBS subscribership continues to show strong growth. As of June 1998, the four DBS providers supplied programming to more than 7.2 million subscribers. This is an increase of more than 2.2 million subscribers since June 1997, or an increase of nearly 43%. DBS subscribers now represent 9.40% of all MVPD subscribers compared to 6.85% a year earlier. In addition, industry reports indicate that 2.2 million of the 3.6 million new MVPD subscribers in 1998, or almost two-thirds, are choosing DBS. It is projected that DBS subscribership will grow to 20 million by 2003, with its share of the multichannel video market growing to 25%.

Finally, it is likely that, over time, the differences between cable and DBS will continue to diminish. Currently, it appears that DBS represents a substitute for some consumers, especially for those with access to local broadcast stations. As DBS equipment prices continue to decline and if DBS operators are authorized to offer local broadcast signals, DBS could become a closer substitute to cable for an increasing number of consumers.